Volume A.

(PLEADINGS, ORDERS, ETC.)

71921

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1911.

No. 451.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED [illegible], 1911.

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1 UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 883. Equity.

Pleas before the honorable the judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division, of the June, A. D. 1910, term of said court, held in said district in the year of our Lord one thousand nine hundred and ten (1910).

DISTRICT OF MINNESOTA:

Be it remembered that on the 1st day of October, A. D. 1908, came the complainants, by their solicitors and counsel, and filed in the clerk's office of said court their bill of complaint, which is omitted from this return in view of the subsequent filing of an amended bill of complaint.

And thereupon, upon application of said solicitors, a writ of subpœna was duly issued out of said court and under the seal thereof duly vested, and in the words and figures following, to wit:

2 Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION.

Præcipe for chancery subpœna.

To the clerk of the above-named court:

Please issue chancery subpœna directed to the above-named defendant, returnable November rules, 1908.

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Solicitors for Complts.

(Endorsed:) Præcipe for chancery subpœna. Filed October 1st, 1908. Henry D. Lang, clerk.

3 United States Circuit Court, District of Minnesota, Third Division.

Chancery common rule and order book.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } Equity. No. 883.

1910. Oct. 1st.

The complainants herein having filed a bill in equity in this cause, on application of F. C. Dillard, James B. Kerr, and Hale Holden, solicitors for said complainants, it is hereby ordered that a chancery subpœna issue as therein prayed.

(Entered, C. R. "C," page 8.)

4 (Original.)

United States of America, District of Minnesota, Third Division.

The President of the United States of America to the Interstate Commerce Commission greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the Circuit Court of the United States for the District of Minnesota, on the first Monday of November next, at the city of St. Paul, then and there to answer the bill of complaint of Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, citizens of the States of Utah, Oregon, Kentucky, Wisconsin, Minnesota, and Illinois, filed against you on the 1st day of October, A. D. 1908; hence fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 1st day of October, 1908. Issued at my office, in the city of St. Paul, under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL OF COURT.] HENRY D. LANG, *Clerk*,
By ——— ———, *Deputy*.

Memorandum: The above-named defendant to enter its appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk*,
By ——— ———, *Deputy*.

F. C. DILLARD,
JAMES B. KERR, and
HALE HOLDEN,
Complainants' Solicitors.

(Indorsed:) Served copy of within writ on within-named defendant by service on E. A. Moseley, its secretary. Oct. 3, 1908. Aulick

Palmer, U. S. marshal, Dist. of Columbia. No. ——. United States Circuit Court, District of Minnesota, —— Division. ——— vs. ——— Chancery subpœna. (Original.) Returnable to November Rules, 1908. Filed October 8th, 1908. Henry D. Lang, clerk. ——— ———, Complainants' solicitor.

5 Thereafter and on October 12th, 1908, the following præcipe for appearance and order of appearance on behalf of defendant were filed and entered of record in said cause, to wit:

6 Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC R. R. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 883.

Appearance.

The clerk will enter my appearance for the defendant in above-entitled case.

LUTHER M. WALTER.

(Indorsed:) United States Circuit Court, District of Minnesota, —— Division. ——— vs. ———. Appearance of Luther M. Walter for deft. Filed October 12th, 1908. Henry D. Lang, clerk, by Louise B. Trott, deputy.

7 United States Circuit Court, District of Minnesota, Third Division.

Chancery rule and order book.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 883. Equity.

Oct. 12.

This day comes the defendant, by Luther M. Walter, solicitor, on whose motion it is hereby ordered that the appearance of said defendant be, and the same is hereby, entered.

(Entered, C. R. "C," page 140.)

Thereafter and on October 16th, 1908, the following certificate of the Attorney General was filed in said cause, to wit:

8 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILROAD COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

To the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the Union Pacific Railroad Com-

pany et al. against the Interstate Commerce Commission, under the act of Congress entitled "An act to regulate commerce," as amended by the act of June 29, 1906, and that said suit is, in my opinion, a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies'; 'An act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted," approved February 11, 1903; and in further compliance with the provisions contained in section 16 of the "Act to regulate commerce," approved June 29, 1906, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Eighth Circuit, to the end that said case shall be given precedence over other cases in said court, and will be assigned for hearing at the earliest practicable date before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney General.

WASHINGTON, D. C., *October 13, 1908.*

9 (Endorsed:) Certificate of the Attorney General under the acts of February 11th, 1903, and June 29th, 1906. Filed October 16th, 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following certificate of Henry D. Lang, clerk, was filed in said cause, to wit:

10 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that on the 16th day of October, A. D. 1908, I personally handed to and left with the Honorable Walter H. Sanborn, one of the United States circuit judges for the Eighth Circuit, at St. Paul, Minnesota, a duly certified copy of the certificate of the Attorney General, under the acts of February 11th, 1903, and June 29th, 1906, this day filed in the above-entitled cause; and that on the same day I mailed a certified copy to the Honorable Willis Van Devanter by enclosing a copy thereof in

an envelope addressed to him at Cheyenne, Wyoming, and depositing the same in the post office at St. Paul, Minnesota; and that on the same day I also mailed a duly certified copy of said certificate to the Honorable Elmer B. Adams by enclosing the same in an envelope addressed to him at St. Louis, Missouri, and depositing the same in the post office at St. Paul, Minnesota; and that on the same day I also mailed a duly certified copy of said certificate to the Honorable William C. Hook by enclosing the same in an envelope addressed to him at Leavenworth, Kansas, and deposit*ed*ing the same in the post office at said St. Paul, Minnesota.

In witness whereof, I have hereunto set my hand and official seal this 16th day of October, A. D. 1908.

HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of Henry D. Lang, clerk, of delivery of Attorney General's certificate to U. S. circuit judges. Filed October 16th, 1908. Henry D. Lang, clerk.

11 Thereafter and on October 16th, 22nd, and 27th the following receipts of the U. S. circuit judges were filed in said cause, to wit:

12 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

Received of Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, a certified copy of the certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29th, 1906, filed in the above-entitled cause October 16th, 1908.

Dated October 16th, 1908.

WALTER H. SANBORN, *Circuit Judge.*

(Endorsed:) Receipt of Hon. Walter H. Sanborn for Attorney General's certificate. Filed October 16th, 1908. Henry D. Lang, clerk.

13 United States Circuit Court of Appeals, Eighth Circuit.

Hon. David J. Brewer, circuit justice, Washington, D. C.; Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. Willis Van Devanter, Cheyenne, Wyo.; Hon. William C. Hook, Leavenworth, Kan.; Hon. Elmer B. Adams, St. Louis, Mo., circuit judges.

ST. LOUIS, MO., *Oct. 20, 1908.*

HENRY D. LANG, Esq.,
Clerk United States Circuit Court, St. Paul, Minnesota.

DEAR SIR: I beg to acknowledge receipt of your letter of October 16th, with enclosures. I see no occasion for accepting service in the manner suggested by some of your enclosures as if the proceeding were a suit against the judges individually.

Very respectfully, yours, ELMER B. ADAMS.

(Endorsed:) Receipt of Judge Elmer B. Adams for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

14 ST. LOUIS, MISSOURI, *October 19, 1908.*

Mr. HENRY D. LANG, *Clerk, St. Paul, Minnesota.*

DEAR SIR: I am in receipt of yours of the 16th inst., enclosing copies of the certificates of the Attorney General in the three cases, Union Pacific Railroad Co., Northern Pacific Railway Co., and Great Northern Railway Co., against The Interstate Commerce Commission, Nos. 883, 884, and 885, in the Circuit Court for the Minnesota District.

Very truly, WILLIAM C. HOOK.

(Endorsed:) Receipt of Judge Wm. C. Hook for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

15 ST. PAUL, *October 16th, 1908.*

Hon. WILLIS VAN DEVANTER,
U. S. Circuit Judge, Cheyenne, Wyo.

MY DEAR JUDGE: I hand you herewith a certified copy of the certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29, 1906, filed to-day in each of the cases of 883, equity, Union Pacific Rd. Co. et al. vs. Interstate Commerce Commission; 884, equity, Northern Pacific Railway Co. et al. vs. Interstate Commerce Commission; and 885, equity, Great Northern Railway Co. et al. vs. Interstate Commerce Commission, together with a receipt for each, which kindly sign and return to me.

Yours, very truly,

HENRY D. LANG, *Clerk.*

Dictated.

ST. PAUL, *Oct. 28, 1908.*

The above enclosures were received by me to-day, the same having been forwarded from Cheyenne.

WILLIS VAN DEVANTER.

(Endorsed:) Receipt of Judge Van Devanter for certificate of Attorney General. Filed October 27th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

And on October 20th the following amednd bill of complaint was in said cause, to wit:

In the Circuit Court of the United States for the District of Minnesota. Third Division.

Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burington and Quincy Railroad Company, and Oregon and California Railroad Company, complainants, *vs.* The Interstate Commerce Commission, defendant.	In equity.	No. 883.

Amended bill of complaint.

To the honorable judges of the Circuit Court of the United States within and for the District of Minnesota:

Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah;
17 Oregon Railroad and Navigation Company, a corporation organized under the laws of the State of Oregon; Southern Pacific Company, a corporation organized under the laws of the State of Kentucky; Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin; Great Northern Railway Company, a corporation organized under the laws of the State of Minnesota; Chicago, Burlington and Quincy Railroad Company, a corporation organized under the laws of the State of Illinois; and Oregon and California Railroad Company, a corporation organized under the laws of the State of Oregon, bring this, their amended bill, against the Interstate Commerce Commission, established and existing under and by virtue of an act of the Congress of the United States.

And thereupon your orators complain and say:

I.

That the Union Pacific Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Short Line Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Railroad and Navigation Company is a corporation duly organized and existing under the laws of the State of Oregon; that the Southern Pacific Company is a corporation duly organized and

existing under and by virtue of the laws of the State of Kentucky; that the Northern Pacific Railway Company is a corporation duly organized under and by virtue of the laws of the State of Wisconsin; that the Great Northern Railway Company is a corporation duly organized and existing under the laws of the State of Minnesota; that the Chicago, Burlington and Quincy Rail-
18 road Company is a corporation duly organized and existing under the laws of the State of Illinois; and that the Oregon and California Railroad Company is a corporation duly organized and existing under the laws of the State of Oregon; that the defendant, The Interstate Commerce Commission, has been created and established, and during all the times herein mentioned has existed under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof.

Your orators further show that the Northern Pacific Railway Company has its principal operating office in the city of St. Paul, in the District of Minnesota, Third Division thereof.

II.

Your orators further show that the Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company are each common carriers, engaged in the transportation of property by railroad, by continuous carriage or shipment, from points in the State of Oregon to points in the State of Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Iowa, Missouri, Kansas, Nebraska, Utah, and Colorado, and have been so engaged for many years past, and a large proportion of the property so transported by your orators is and has been lumber,
19 shingles, and other forest products produced at points in the State of Oregon; that for the purpose of transporting the lumber, shingles, and other forest products so produced in the State of Oregon to points of consumption in the States above named your orators have established and maintained through routes and joint rates over their lines and the lines of connecting railways from said points in the State of Oregon to destinations in said other States.

III.

The rates for the transportation of lumber, shingles, and forest products from points in the State of Oregon over the lines of your orators' railways to points thereon in the States above mentioned and to points in said States and other States over lines of connecting railways, which rates were in effect on October 31, 1907, and which had been in effect for a long time before that date, were prescribed

in certain tariffs duly filed, published, and posted under the provisions of the act entitled "An act to regulate commerce." These tariffs are known and described as follows: S. R. 662, I. C. C. No. 564; G. N. G. F. O. 9838, I. C. C. No. A 1101; G. N. G. F. O. 13051, I. C. C. No. A 1427; G. N. G. F. O. 17526, I. C. C. No. A 2231; G. N. G. F. O. 18025, I. C. C. No. A 2427; G. N. G. F. O. 18837, I. C. C. No. A 2661; Northern Pacific No. 23275, I. C. C. No. A 3095; and Northern Pacific No. 20285, I. C. C. No. B 479, and are too voluminous to be set out in this amended bill of complaint, but true copies thereof have been filed in cause No. 884, entitled "Northern Pacific Railway Company and others v. The Interstate Commerce Commission," heretofore filed and now pending in this court, and reference thereto for convenience is hereby prayed as if the same
20 were made a part of this amended bill of complaint and filed herewith, the said tariffs being marked, respectively, Exhibits 1 to 8, inclusive.

IV.

That more than thirty days previous to November 1, 1907, your orators, together with a large number of other carriers, filed, published, and posted, in accordance with the provisions of that certain act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof, a certain tariff known as "Transcontinental Freight Bureau East-bound Special Tariff No. S. R. 963, I. C. C. No. 850," with Supplements 1 and 2, which became effective November 1, 1907, wherein rates were prescribed for the transportation of lumber, shingles, and forest products from points in the State of Oregon to points in North Dakota, Montana, Wisconsin, Iowa, Illinois, Missouri, Nebraska, Arkansas, Louisiana, Texas, Oklahoma, New Mexico, Colorado, Kansas, Utah, and Wyoming, and at or about the same time your orator, Great Northern Railway Company, filed, published, and posted, under the provisions of said act of Congress, a certain local and joint tariff known as "Great Northern I. C. C. No. A–2667," which prescribed the rates for the transportation of lumber, shingles, and forest products from points in the State of Oregon to points in Oregon, Washington, Idaho, Montana, Alberta, and British Columbia, which said tariff, and the rates therein prescribed, became effective on November 1, 1907. And at or about the same time your orator, Northern Pacific Railway Company, filed, published, and posted a certain local and joint tariff prescribing rates for the transportation of lumber,
21 shingles, and forest products from points in the State of Oregon to points in Idaho, Montana, and North Dakota, which rates became effective on November 2, 1907, said tariffs being I. C. C. No. A–3432.

That said tariffs above described are too voluminous to be set out in this amended bill of complaint; that true copies thereof have been filed in said cause No. 884, entitled "Northern Pacific Railway Company et al. against The Interstate Commerce Commission," heretofore

referred to, and reference thereto is hereby prayed as if the same were made a part of this amended bill of complaint, the said tariff I. C. C. No. 850 being marked "Exhibit 9," the said tariff I. C. C. No. A-2667 being marked "Exhibit 10," and the said tariff I. C. C. No. A-3432 being marked "Exhibit 11."

That in and by said tariffs so filed, published, and posted the articles or commodities therein described were designated as groups A, B, C, and D, and by the terms thereof group A comprised shingles; group B comprised lumber, poles, piling, and timbers of cedar of single-car lengths, and certain articles manufactured from cedar; group C comprised lumber, poles, piling, and timbers of fir, hemlock, larch, pine, and spruce of single-car lengths and certain articles manufactured therefrom; and group D comprised long timbers, poles, piling, or lumber requiring two or more cars for transportation.

V.

That the rates named in said tariffs so filed, published, and posted thereupon became, were, and are the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all of the points in the State of Oregon named in said tariffs to each and all of the points of destination in said other States named in said tariffs, and said rates, and each and all of them, were, on November 1st, 1907, ever since have been, and now are low for the service rendered and by comparison with other rates, and as such neither unreasonable nor unjust, and, as your orators verily believe, will continue so to be for the period of two years from October 15, 1908.

VI.

That as soon as the said rates prescribed by the tariffs above mentioned became effective, a certain proceeding was commenced before the Interstate Commerce Commission, entitled "Oregon and Washington Lumber Manufacturers' Association and others v. Union Pacific Railway Company and others," being cause No. 1327 before said commission. In said cause No. 1327, the Oregon and Washington Lumber Manufacturers' Association and others complained against your orators and other carriers, parties to said tariffs, and alleged that they were engaged in the manufacture and interstate shipment and sale of lumber, shingles, and other forest products from points within to points without the State of Oregon, the rates on which were fixed by said tariffs, and alleged that the rates fixed therein for the transportation of such commodities were unreasonable and unjust. Upon the filing of the complaint in said cause, the defendant Interstate Commerce Commission required your orators and the other carriers named as defendants in said proceedings to answer the complaints of said complainants, and thereupon answers were duly filed by your orators, and upon the issues raised therein evi-

dence was produced before the said Interstate Commerce Com-
23 mission by such complainants and by your orators, and the matters in difference in said cause were submitted to the commission on March 21, 1908.

VII.

Thereafter, and on June 2, 1908, the defendant Interstate Commerce Commission entered an order in said cause No. 1327, which order was in words and figures as follows:

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1327.

Oregon & Washington Lumber Manufacturers' Association; Eastern & Western Lumber Company; Curtiss Lumber Company; Clark & Wilson Lumber Company; Portland Lumber Company; Peninsular Lumber Company; Tongue Point Lumber Company; Booth-Kelly Lumber Company; North Pacific Lum-
24 ber Company; Bridal Veil Lumbering Company; and Stanley Smith Lumber Company

v.

Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Astoria & Columbia River Railroad Company; Oregon & California Railroad Company; and Corvallis & Eastern Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon, to which report reference is hereby made:

It is ordered that the said defendants, Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; Great Northern Railway Company; Chi-

cago, Burlington & Quincy Railroad Company; Astoria & Columbia River Railroad Company; Oregon & California Railroad Company; and Corvallis & Eastern Railroad Company, and each of them, be, and they are hereby, notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present rates on interstate shipments of lumber, shingles, and other forest products, from points of origin in Oregon, Washington, Idaho, Montana, and British Columbia to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054,
25 Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al., decided June 2, 1908.

It is further ordered that said defendants, and each of them, be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, rates on said interstate shipments of lumber, shingles, and other forest products from said points of origin to said points of destination which shall in no instance exceed the rates on like shipments between the same points which had been duly filed with the commission as required by law and which were in effect immediately prior to November 1, 1907, subject to present minimum weight regulations and the following limitations:

The rates on said lumber, shingles, and other forest products from said points of origin to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak.; Moorhead and Breckenridge, Minn.; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Mo., and thence to Porth Arthur, Tex., along the Kansas City Southern Railway, also including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding those points to which rates are prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al., decided June 2, 1908, which were in effect immediately prior to November 1, 1907, shall be restored, except that the differentials prescribed in case No. 1348, Potlatch Lumber Co. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, shall be observed; the rates which were in effect immediately prior to November 1, 1907, from said points of origin to points east of the line mentioned, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux
26 City, Iowa, and Kansas City, Mo., may be increased, in no case exceeding 5 cents per 100 pounds, and subject to the differentials prescribed in said case No. 1348.

This case will be held open for such supplemental proceedings as it may be necessary for interested parties to institute in respect to reparation.

VIII.

Your orators further show that in said cause numbered 1327, wherein the Oregon and Washington Lumber Manufacturers' Association and others are complainants, and your orators are defendants, the said defendant Interstate Commerce Commission on July 27, 1908, by order duly entered, changed, and extended the effective date of said order from August 15 to October 15, 1908, and again, on September 1, 1908, said defendant commission entered in said cause a further order as follows, to wit:

Upon further consideration of the record in the above entitled cause,

It is ordered that the order heretofore entered by the commission in said cause on the second day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15th to October 15th, 1908, be, and the same is, hereby further modified and amended by adding thereto the following:

It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina–Port Arthur line, as defined in the original order herein, as to which no such differential, or a differential of less than 10 cents per 100 pounds, existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above rates on fir lumber between the same points, provided that the differentials pre-
27 scribed in case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer.

IX.

Your orators further show that in said cause numbered 1327, wherein the Oregon and Washington Lumber Manufacturers' Association and others are complainants, and your orators are defendants, the said defendant Interstate Commerce Commission, on September 25, 1908, made a further order as follows, to wit:

Upon further consideration of the record in the above-entitled cause,

It is ordered that the order of September 1, 1908, modifying the original order herein, be, and it is hereby, amended and modified so that it will read as follows:

It is ordered that the order heretofore entered by the commission in said cause on the 2d day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15 to October 15, 1908, be, and the same is, hereby further modified and amended by adding thereto the following:

It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina–Port Arthur line, as defined in the original order herein, as to which no differential, or a differential of less than 10 cents per 100 pounds, existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials pre-
28 scribed in case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

It is further ordered that all increases made under this order in said differentials above those in effect on October 31, 1907, shall become effective on October 15, 1908, and that as to all shipments which moved subsequent to October 31, 1907, and prior to October 15, 1908, the rates prescribed in the original order herein shall be applied.

It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer.

X.

Your orators further show that the orders in cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and in cause No. 1331, entitled "Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al.," and in cause No. 1348, entitled "Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al.," referred to in the order so entered by the defendant commission in cause 1327, are as follows, to wit:

29 Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

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No. 1054.

PACIFIC COAST LUMBER MANUFACTURERS' ASSOCIATION; SOUTHWESTERN Washington Lumber Manufacturers' Association; and Shingle Mills Bureau,

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY Company; Northern Pacific Terminal Company of Oregon; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Oregon & California Railroad Company; Southern Pacific Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Colorado Midland Railway Company; Colorado & Southern Railway Company; Chicago, Burlington & Quincy Railway Company; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Missouri Pacific Railway Company; Leavenworth, Kansas & Western Railway
30 Company; St. Joseph & Grand Island Railway Company; Kansas City Northwestern Railroad Company; and Chicago & Northwestern Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered that the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, and the Union Pacific Railroad Company, be, and they are hereby, notified and required to establish, on or before the 15th day of August, 1908, between their respective lines of transportation and maintain in operation for a period of not less than two years from said 15th day of August, through routes for the transportation of fir lumber, cedar lumber, spruce lumber, and shingles from points on the lines of the Northern Pacific Railway Company in Washington north of Portland, Ore., through said Portland to Ogden and Salt Lake City, Utah, and common points in Utah; and are also required to establish and put in force, on or before the said 15th day of August, and for a period of at least two years thereafter maintain a joint through rate not exceeding 40 cents per 100 pounds in carloads for the transportation of fir lumber and spruce lumber between said points, and a rate not exceeding 50 cents per 100 pounds in carloads for the transportation of cedar lumber and shingles between said points; and the said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain the notation that it is issued under the

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31 authority hereby granted, and must refer to the title and number of this case.

It is further ordered that as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland over the lines of the Northern Pacific Railway Company and the Great Northern Railway Company and the Union Pacific system to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION; Willamette Valley Lumber Company; Falls City Lumber Company; Curtiss Lumber Company; Charles K. Spaulding Logging Company; Booth-Kelly Lumber Company; J. H. Chambers; H. M. Parvin; and Cruzan Brothers, complainants; and Inman-Poulsen Lumber Company; Oregon & Washington Lumber Company;

32 East Side Mill & Lumber Company; Standard Box and Lumber Company; Jones Lumber Company; and St. Johns Lumber Company, interveners.

v.

SOUTHERN PACIFIC COMPANY AND OREGON & CALIFORNIA RAILROAD Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Southern Pacific Company and the Oregon & California Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough, green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the State of Oregon, and upon the west bank thereof south of Corvallis, Oreg., and upon the west bank of said river north of said Corvallis, to San Francisco, Cal., and bay points.

It is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the

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said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough, green fir lumber and lath, in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River and upon the west bank thereof south of said Corvallis, to San Francisco, Cal., and bay points; and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of
33 said Corvallis, to said San Francisco and bay points, not including in either rate Portland, Oreg., as a point of origin.

And it is further ordered, That said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of complying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1348.

Potlatch Lumber Company; St. Joe Lumber Company; B. R. Lewis Lumber Company; McGoldrick Lumber Company; Lamb-Davis Lumber Company; Fidelity Lumber Company; Washington Mill Company; Orrin S. Good; National Lumber Company; Cascade Lumber Company; Springton Lumber Company; Wm.
34 Musser Lumber & Manufacturing Company; Phoenix Lumber Company; Standard Lumber Company; Karamin Lumber Company; E. A. Humphrey and J. R. Humphrey, partners doing business under the name of the Elkhorn Saw Mills; Buckeye Lumber Company; Lindsley Brothers Company; W. H. Gerhart-Braddock Lumber Company, a co-partnership composed of W. H. Gerhart and A. V. Bradrick; S. H. & L. Lumber Company, a co-partnership composed of G. W. Shaw, J. J. Herlihy, and A. W. Lammert; Idaho Pole Company, a co-partnership composed of W. L. Beckwith and John H. Fowler; Chewelah Mill Company; Reeves-Farrell Lumber Company; Post Falls Lumber & Manufacturing Company; Laclede Lumber Company; Bonners Ferry Lumber Company; Dehlbohm Lumber Company; Humbird Lumber Company; Dover Lumber Company; Sand Point Lumber & Pole Company; Barber Lumber Company; Overland Lumber Company; Panhandle Lumber Company, Limited; George Palmer

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Lumber Company; Grande Ronde Lumber Company; Stoddard Brothers Company; Schockley & McMurren Lumber Company; Goodnough Mercantile & Stock Company; Summerville Lumber Company; Wisconsin-Oregon Lumber Company, and Empire Lumber Company.

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY Company; Chicago, Burlington & Quincy Railroad Company; Spokane Falls & Northern Railway Company; Columbia & Red Mountain Railway Company; Kootenai Valley Railway Company; Red Mountain Railway Company; Southern Pacific Company; Union Pacific Railroad Company; Oregon Short Line Railway Company; Oregon Railroad & Navigation Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul
35 Railway Company; Canadian Pacific Railway Company; Spokane-International Railway Company; Coeur D'Alene & Spokane Railway Company, Limited; Spokane & Inland Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Idaho & Washington Northern Railroad Company; and Chicago, Milwaukee & St. Paul Railway Company of Washington, Defendants; Oregon & Washington Lumber Manufacturers' Association, Intervener.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered that said defendants, except the Chicago, Milwaukee and St. Paul Railway Company of Washington, are hereby notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present relation of rates on interstate shipments of lumber, shingles, and other forest products from points of origin in Washington, Oregon, Idaho, and Montana to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific R. Co. et al., and case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al.

It is further ordered that said defendants and each of them, except the Chicago, Milwaukee & St. Paul Railway Company of Washington, be, and they are hereby, notified and required to establish
36 and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years rates on said interstate shipments of lumber, shingles, and other forest products in accordance with the following differentials:

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane rates" group to points

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on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Texas, along the Kansas City Southern Railway, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the rates prescribed by the commission in cases No. 1327, Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. et al.; No. 1329, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al.; and No. 1335, Southwest Washington Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et al.; from the "coast rates" group, by differentials beginning at not less than 2 cents per 100 pounds, and graded up westwardly (a) to a differential of not less than 6 cents per 100 pounds at Buford, N. Dak., on the line of the Great Northern Railway; (b) to a differential of not less than 6 cents per 100 pounds at Medora, N. Dak., on the line of the Northern Pacific Railway; (c) to a differential of not less than 6 cents per 100 pounds at Edgemont, S. Dak., on the line of the Chicago, Burlington & Quincy Railroad; (d) to a differential of not less than 6 cents per 100 pounds at Cheyenne, Wyo., on the line of the Union Pacific Railroad; (e) and to a differential of not less than 6 cents per 100 pounds at Denver, Colo., on the line of the Union Pacific Railroad.

Rates from the present "Spokane rates" group and from the present "Montana–Oregon" rates group to points on and west of said north and south line, Pembina–Port Arthur, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be
37 less than the "coast rates," as prescribed in the cases specified, by differentials beginning at not less than 3 cents per 100 pounds and graded up westwardly therefrom to a differential of not less than 7 cents per 100 pounds at Buford, N. Dak., Medora, N. Dak., Edgmont, S. Dak., Cheyenne, Wyo., and Denver, Colo., as described in the preceding paragraph.

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane rates" group to points east of said line, Pembina–Port Arthur, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "coast rates," as prescribed in the cases specified, by a differential of not less than 2 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi crossing to the Mississippi River crossings.

Rates from the said "Spokane rates" group and the "Montana–Oregon" rates group as those groups now exist, to points east of said line, excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux

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City, Iowa, and Kansas City, Mo., shall be less than the "coast rates," as prescribed in the cases specified, by a differential of not less than 3 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi River crossings.

And it is further ordered that as to the Chicago, Milwaukee & St. Paul Railway Company of Washington the complaint in this proceeding be, and it is hereby, dismissed.

XI.

And your orators further show that the defendant Interstate Commerce Commission, on the 1st day of September, 1908, in said cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' As-
38 sociation et al. v. Northern Pacific Railway Company et al.," entered a further order as follows, to wit:

Upon further consideration of the record in the above entitled cause;

It is ordered that the order heretofore entered herein by the commission on the first day of June, 1908, and as amended by the order of the commission entered on the 27th day of June, 1908, changing the effective date of said order from Aug. 15, 1908, to Oct. 15, 1908, be further modified and amended so as to read as follows:

It is ordered that, as the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company, have failed and neglected to voluntarily establish a through route for the transportation of forest products between the points hereinafter named, and as no reasonable or satisfactory through route now exists between said points, that said defendants last named be, and they are hereby, required on or before the 17th day of October, 1908, to establish and maintain in operation for a period of not less than two years thereafter, through routes through Portland, Ore., over their respective lines of railroad for the through transportation of fir and spruce lumber, shingles, cedar lumber, and long timbers requiring two or more cars, including with each commodity named other forest products grouped therewith in the tariff hereinafter mentioned, from all points in Washington on the line of the Northern Pacific Railway Company as far north as Seattle and not east of Palmer, Wash., excluding points south and east of Seattle having rail connection with Seattle only by junction points north of Seattle, to Salt Lake and Ogden, Utah, and to all other points in Utah taking same rates as Salt Lake and Ogden on shipments of forest products from Portland, Ore., as shown by Transcontinental Freight Bureau Tariff I. C. C. No. 564 and supplements thereto.

39 It is further ordered that the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon,

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the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company be, and they are hereby, notified and required to establish and put in force on or before the 17th day of October, 1908, and maintain for a period of two years thereafter, joint through rates applicable to said through routes on the forest products hereinafter named, including with each other forest products grouped therewith in the tariffs last above mentioned, from all points of origin on said through routes to all destinations above named, which said joint through rates shall in no case exceed the following scale in cents per hundred pounds:

Fir and spruce lumber in carloads	$0.40
Shingles, in carloads	.50
Cedar lumber	.50
Long timbers requiring two or more cars	.50

subject, however, to present minimum weight regulations.

It is further ordered that in establishing joint rates on the forest products above named applicable to the through routes hereinbefore ordered between the respective points of origin and destinations mentioned, said defendants shall in no case make said joint through rates more than 2½ cents per 100 pounds higher than the rates on the same forest products from Portland, Ore., to said destinations.

It is further ordered that the above order does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction via the same line when the shorter is included within the longer.

It is further ordered that said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain notation that it was issued under the authority hereby granted and must refer to the title and number of this case.

40 It is further ordered that as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland, Ore., over the lines of the Northern Pacific Railway Company, the Great Northern Railway Company, and the Union Pacific system to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed.

XII.

Your orators further show that the effect of the orders so entered by the defendant in said cause 1327 if enforced will be to reduce the rates fixed by the tariffs of your orators for the transportation of lumber, shingles, and forest products from points within the State of Oregon to points in the other States above mentioned substantially five (5) cents a hundred pounds, and in some instances more than five cents a hundred pounds.

XIII.

Your orators aver and charge that in making said orders and endeavoring to establish said rates said commission acted without warrant of law; that the said act of 1887 to regulate commerce, and the several acts amendatory thereof and supplementary thereto, particularly the amendment of June 29, 1906, popularly known as the "Hepburn bill," under which said commission professed to act, are in violation of the Constitution of the United States in that they profess to confer upon said commission executive, legislative, and judicial powers. More specifically pleading in this behalf, your orators say: All through said acts administrative powers are conferred upon the commission. In section 15 the commission is authorized to act as a court, to take judicial cognizance of com-
41 plaint filed for damages, and after hearing to award damages, which award establishes prima facie right in the complainant, and which no carrier against whom the award has been made can resist except by assuming the burden of proof and overthrowing the prima facie effect of the commission's award.

The award can be resisted only under penalty of the carriers paying not only the usual costs of suit, but an attorney's fee to complainant in addition if cast in the action.

By section 15 of said act said commission is authorized and empowered, after a hearing upon complaint, whenever in its opinion any rate or charge demanded, charged, or collected by any carrier to the act is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, to determine and prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case as the maximum to be charged, and to make an order that the carrier shall cease and desist from demanding, charging, or collecting the rate or charge complained of and condemned by said commission, and shall not thereafter, for a period not exceeding two years, publish, demand, or collect any rate or charge in excess of the maximum rate or charge so prescribed by said commission as a substitute for the rate or charge condemned.

Under the provisions of said section and of section 13 of the act, in which the complaint containing a statement of the charges made is more particularly provided for, the commission is empowered to proceed, and the proceeding itself is against the particular carrier or carriers, and such carrier or carriers only as are charged with
42 unreasonableness in the matter of its or their rates; and upon hearing and trial of such carrier or carriers in said proceeding the said commission, under the aforesaid sections, is authorized to adjudge the rate or charge of said particular carrier or carriers to be unreasonable, and as a consequence thereof to adjudge against said particular carrier or carriers another different and lower rate as the maximum to be charged by such particular carrier or carriers in such case for a period not exceeding two years. Such proceeding, hearing, trial, determination, and judgment involve and require the exercise

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of judicial power by the same commission, and it is not competent to Congress to invest said commission with such power; and any investiture, distribution, or exercise of such power in, to, or by said commission is in violation of the Constitution of the United States, and particularly so much thereof as provides for the distribution and exercise of the judicial authority of the United States; and herein reference is made to section 1 of Article III of the Constitution of the United States; and the commission has and possesses no such judicial power.

Further pleading as to that provision of section 15 of the act to regulate commerce, as amended, which declares that the commission shall prescribe what shall be the reasonable rate or rates, charge or charges, to be observed as the maximum to be charged, your orators say this provision is contrary to the Constitution of the United States, and especially to section 1, Article I, above quoted, in that by that article all legislative power is confined to the Congress of the United States. The prescribing of a maximum rate which carriers may charge is a legislative function. Congress has not pre-
43 scribed a maximum rate to govern in the cases provided for, but by said act delegates this power to the commission, and in doing so places in its hands legislative power.

XIV.

Your orators aver that in and by section 1 of the said act to regulate commerce it is provided that all charges made by any common carrier subject to the act, for any service rendered or to be rendered in the transportation of property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. That your orators, as the owners and operators of the railroads herein above described, and the franchises, equipment, and appurtenances connected with such railroads, are entitled to the possession, management, and beneficial use thereof, and are authorized to establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable. In and by section 15 of the said act the Interstate Commerce Commission is authorized and empowered, after hearing upon complaint, whenever it shall be of the opinion that any of the rates or charges demanded or charged or collected by any common carrier for the transportation of property as defined in the first section of the act are unjust or unreasonable or otherwise in violation of any of the provisions of the act to determine and prescribe what will be a just and reasonable rate or rates, charge or charges to be thereafter observed in such case as the maximum to be charged, and to make an order that carriers shall cease and desist from such violation to the extent that the commis-
44 sion find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed. That in and

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by said section 15 of said act it is provided that all orders of the commission prescribing rates shall take effect within a reasonable time, and not less than 30 days after the making of the same, and shall continue in force for such period, not exceeding two years, as established and prescribed by the order of the commission, unless the same shall be suspended or modified or set aside by the commissioners or be suspended or set aside by a court of competent jurisdiction. That in and by the 16th section of the said act it is provided that any carrier or any officer or agent of any carrier who knowingly fails or neglects to obey any order of the commission prescribing rates, as provided in said section of the act, shall forfeit to the United States the sum of $5,000 for each offense, and that each distinct violation shall be deemed a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

Your orators aver that the present rates attempted to be set aside by said order, but fixed and established by your orators for the transportation of lumber, shingles, and forest products from points aforesaid mentioned in the order of the said commission, and each of the said rates, are and will be for more than three years hence, low, just, and reasonable rates for the service performed in the transportation of said commodities between said places and each of them, and that the rates prescribed by the commission in and by its order, are, and each of said rates is and will be for more than three years hence, unjust and unreasonable for the service performed in
45 the transportation of lumber, shingles, and forest products, and are and will be inadequate compensation to your orators for the service rendered.

Your orators aver that by Article V of the amendments to the Constitution of the United States your orators have the right to a judicial investigation in a court by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy of the question as to the reasonableness of the said rates so fixed and established by your orators, and of the question as to the reasonableness of the said rates so fixed and established by the said commission as aforesaid, and of each of said questions.

That the attempt of the commission in and by said order sought to be set aside herein, to set aside and annul the rates established by your orators and the establishing of the said rates prescribed by said orders and each of them by the said commission, against the will of your orators, was pro tanto the taking of the property of your orators and depriving your orators thereof without due process of law, in violation of Article V of the amendments to the Constitution of the United States; and that the making of the said order of the commission herein set out was pro tanto a taking and depriving the company of its property without due process of law, in violation of Article V of the amendments to the Constitution of the United States, and thereby void and of no effect.

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Your orators further aver that the attempt of sections 15 and 16 of the said interstate commerce act to make any order of the commission prescribing rates to be charged for the transportation
46 of property become effective of its own force prior to a hearing in a court of justice of the question of the reasonableness of the rates prescribed by said order and said sections 15 and 16 in that regard are void for the reason that in and by section 1, Article III, of the Constitution of the United States all judicial power is conferred upon a Supreme Court of the United States and such inferior courts as Congress may establish, and the judges of said Supreme Court and such inferior courts shall hold office during good behavior, and the said commission has no power to prescribe any time upon which any order of the said commission prescribing rates for the transportation of property to take effect, and that the said order of the said commission is void and of no effect.

That section 16 of said act is unconstitutional and void in that it is therein provided that your orators and each of them, and any officer or agent of your orators, knowingly failing or neglecting to obey the said order of the commission herein set forth, shall forfeit to the United States the sum of $5,000 for each day that your orators or said officers or agents fail to obey said order, notwithstanding that the question of the reasonableness of the rates established by the said order have not been judicially investigated by due process of law in any court of justice, and in that said section makes said order a finality unless suspended by the commission or by some court of competent jurisdiction, and subjects your orators to penalties and forfeitures as therein provided, and deprives your orators of their property without due process of law, contrary to Article V of the amendments to the Constitution of the United States, and the force and effect of said orders sought to be enjoined and set aside
47 herein has been to compel your orators, in order to prevent their property from being forfeited through the operation of such penalties and to save the agents of your orators from being subjected to such penalties (notwithstanding such penalties are only imposed because of said orders of said commission attempting to prescribe and establish such rates), to publish and put into effect on October 15, 1908, the unreasonably low rates so attempted to be prescribed by said commission in and by said orders, whereby your orators aver that their property has been and is now being taken from them against their will and without due process of law, and without their having had a day in court and the right to a judicial investigation by a court under due process of law for the determination of the truth of the matter in controversy before said commission.

XV.

Your orators further show that the only authority sought to be vested in the defendant Interstate Commerce Commission to fix rates for the transportation of property over the lines of your orators'

railways is conferred by said section 15 of said amended act of Congress, approved June 29, 1908, by the terms whereof it is provided that whenever the said commission shall, after a full hearing, be of the opinion that any of the rates or charges demanded, charged, or collected by any common carrier or carriers, subject to the provisions of said act for the transportation of property, are unjust or unreasonable, it shall be authorized " to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be observed in such case as the maximum to be charged "; and your
48 orators further show that the said order so entered in said cause 1327, on June 2, 1908, and the said orders amendatory thereof, are further unauthorized and void, for the reason that your orators have at no time prescribed rates for the transportation of lumber, shingles, or forest products between the points named in said orders in excess of charges which are just and reasonable. And, furthermore, upon the hearing before the defendant in said cause in which said orders were so entered no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust, or unreasonable, and the defendant Interstate Commerce Commission entered its said orders without any justification therefor and without any evidence or finding of fact that said rates so fixed by said defendant were excessive, unjust, or unreasonable.

XVI.

Your orators further show that the rates for the transportation of lumber, shingles, and forest products from points within to points without the State of Oregon as fixed by the said tariffs so in effect on October 31, 1907, were substantially the same rates that were fixed by your orators in the year 1893 and solely by reason of the fact that said rates had been long continued was the conclusion reached by the defendant Interstate Commerce Commission that the rates complained of in said cause 1327, which were and are higher than the rates theretofore in effect, were unreasonable and unjust, and solely by reason of this fact were said orders so entered by the commission, but your orators show that it was established by uncontradicted evidence upon the hearing before the commis-
49 sion that the circumstances and conditions which existed at the time said previous rates were established did not exist on November 1st or 2nd, 1907, and did not exist at the time of said hearing, and had not existed for more than three years prior thereto. That it was established at the hearing before the defendant commission by uncontradicted evidence that at the time said previous rates were established the condition of the lumber market in the United States was such that the lumber product of the State of Oregon could not move to other States in any considerable quantity at rates higher than those so established, but that the condition in this respect has been gradually changing by reason of the exhaustion of the timber supply in Michigan, Minnesota, and Wisconsin, and the

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rapid increase in the value of the yellow-pine product of the Southern States, so that it was established at said hearing by uncontradicted evidence that for a period of at least three years before November 1st, 1907, the occasion for maintaining rates so low as those established in 1893 had ceased. And your orators further aver that the said defendant commission in the determination of the issues involved in said complaint expressly found that in and prior to the year 1893 the lumber interests in the States of Washington and Oregon were in their infancy, and except for purely local consumption mills located therein disposed of their surplus at points reached by water transportation, and that the volume of business was small for a considerable time even after the railroads of your orators reached the coast; that prior to the year 1893 the rates on lumber and forest products from said States to Omaha, St. Paul, and other eastern destinations were higher than the rates established in 1893,
and that under said higher rates little, if any, of the lumber
50 in said coast States moved eastward to said eastern destinations; at that time and for several years thereafter and until the practical disappearance of competition with white-pine lumber manufactured in Wisconsin, Minnesota, and Michigan, manufacturers of lumber in Washington and Oregon were unable to meet the competition of southern yellow pine and northern white pine in the States hereinbefore referred to, but that following upon the reduction in said rates inaugurated in 1893, the lumber interests in said States of Oregon and Washington increased enormously and many mills were built in the interior, so that at and for several years prior to the hearing of said complaint shipments were and had been constantly made in large amounts eastward by the lines of your orators to eastern markets, amounting to a large percentage of the output of said mills; and your orators further aver that it was expressly found to be a fact by the defendant commission that during the period of time that elapsed after the reduction in said rates in 1893 down to the time of said hearing, in the State of Oregon the price of manufactured lumber had greatly increased with increasing profits to the manufacturer, resulting from the market thus secured to him through said reduced rates, and the general advance in price in said markets during the years aforesaid, and the generally prosperous conditions surrounding the manufacture and sale of lumber in the States hereinbefore referred to, whereby your orators aver that the commission found that each and every of the conditions surrounding the lumber industry had completely changed from the time said rates were established in 1893, and that the prosperous
condition of said industry on and for more than three years
51 prior to November 1, 1907, did not require or justify the further maintenance of rates so low as those established in 1893, under the circumstances aforesaid. It was also shown by uncontradicted evidence at said hearing that your orators established and maintained the rates in effect before November 1, 1907, for the reason that in 1893 and for some years thereafter, the great volume of

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traffic moving over your orators' lines of railway was west-bound and the State of Oregon and the neighboring territory furnished insufficient traffic to load east-bound the cars employed in moving the west-bound traffic, and that the rates on lumber, shingles, and forest products were so fixed and at an abnormally low point to furnish loads for cars which would have otherwise moved East without revenue-producing freight, but that for some time before November 1, 1907, the condition had so changed that it was necessary to haul empty cars to the State of Oregon in order to furnish facilities for the movement of lumber, shingles, and forest products. It was also shown at said hearing by uncontradicted evidence that every other important element in the cost of transporting the commodities in question had greatly increased over the cost in 1893 and subsequent years. And your orators further aver that the defendant commission expressly found in its determination of said complaint that in the year 1893, when said low rates were established, the empty-car movement on the lines of your orators was east-bound, and that at the time and for some years thereafter the great volume of traffic moving over your orators' lines of railway was west-bound; but your orators aver that said commission also found that this condition in

52 and about the transportation of lumber from the States of Oregon and Washington had likewise changed since said rates were established in that at and for several years prior to the hearing of said complaint the direction of the empty-car movement on the lines of your orators has been reversed and the same is now west-bound, and that your orators are now and for several years prior to November 1, 1907, have been compelled to haul west-bound large numbers of empty cars for the purpose of furnishing equipment in the States of Oregon and Washington for the loading of lumber east-bound into the States hereinbefore referred to, where said lumber is now sold. And your orators further aver that the commission not only expressly found that the volume of lumber shipped during the last few years over the lines of your orators east-bound had enormously increased and that the lumber interests engaged in said traffic have been extraordinarily prosperous in the past few years, but also found that the density of traffic on the lines of your orators has increased to such an extent that it is more than can be advantageously handled on single-track roads such as the lines of your orators practically are, and that because of the increase in density of traffic aforesaid your orators have been compelled to, and are now engaged in constructing double-track extensions in some cases, in order more advantageously and expeditiously to handle this increased traffic. Your orators further aver that the commission found that the expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials, over and above the expense of operation as it existed at and for a few years after the year 1893, and further found that the increased traffic of your orators has required additional working force and

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equipment, thus recognizing and establishing the contention of
53 your orators that in the matter of the transportation of lumber from the State of Oregon the conditions had greatly changed from the conditions in force at the time said rates were established in 1893.

Your orators further show that the conditions with respect to the transportation of the commodities in question so existing on November 1, 1907, and for several years before that time continued to the time of said hearing as was shown by the uncontradicted evidence there produced, and, as your orators are informed and believe, will continue for at least a period of two years from October 15, 1908.

Your orators further show that notwithstanding the fact that it was so conclusively established at said hearing before the defendant commission that such rates maintained by your orators before November 1, 1907, were established and maintained under conditions wholly different from those existing at the time the rates complained of took effect and at the time of the hearing, the defendant Interstate Commerce Commission held as a matter of law that the continuance of said previous rates raised a presumption that such higher rates were unjust and unreasonable, wherein said commission acted erroneously and through a mistake and under a misapprehension of the law and without authority.

XVII.

Your orators further show that the rates so fixed by the tariffs so becoming effective on November 1 and 2, 1907, are lower than the rates charged for any like service by any carriers in the United States and lower than rates heretofore fixed by the defendant Inter-
54 state Commerce Commission for like services. The rates so fixed by said order are unremunerative and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the State of Oregon to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said orders, and your orators upon information and belief aver that the rates so fixed by said orders are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said orders aforesaid bear no fair or just relation to the rates on other traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden not only upon your orators, but upon the shippers of other commodities.

Your orators further show that the enforcement of said orders of the defendant will deprive your orators of revenue from the transportation of lumber, shingles, and forest products to which they would be entitled under the rates fixed by said tariffs so filed, published, and

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posted to an amount of more than six hundred thousand dollars per year, and each of your orators, by the enforcement of said order, will be deprived of revenue in a sum greatly in excess of two thousand dollars per year.

XVIII.

Your orators therefore pray that a decree be entered herein setting aside and annulling the said orders of the defendant Interstate
55 Commerce Commission in said cause No. 1327 and perpetually enjoining the enforcement of said orders and perpetually enjoining the defendant, and its members, their agents, servants, and representatives from enforcing said orders and from taking any steps or instituting any proceedings for the enforcement of said orders.

And your orators further pray that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that your honors grant unto your orators a writ of subpœna, directed to said Interstate Commerce Commission, commanding it at a certain day and under a certain penalty therein to be specified, to be and appear before your honors in this honorable court, and then and there full, true, and complete answer make to all and singular the premises; but not under oath (an answer under oath being hereby expressly waived), and to stand to and abide by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

Union Pacific Railroad Company, by J. C. Stubbs, its traffic director; Oregon Short Line Railroad Company, by J. C. Stubbs, its traffic director; Oregon Railroad and Navigation Company, by J. C. Stubbs, its traffic director; Southern Pacific Company, by J. C. Stubbs,
56 its traffic director and vice president; Northern Pacific Railway Company, by J. M. Hannaford, 2nd vice president; Great Northern Railway Company, by Robt. I. Farrington, 2nd vice president; Chicago, Burlington & Quincy Railroad Company, by D. Miller, 1st vice president; Oregon and California Railroad Company, by J. C. Stubbs, its traffic director; W. W. Cotton, F. C. Dillard, of counsel for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, and Oregon and California Railroad Company; James B. Kerr, Hale Holden, of counsel for Northern Pacific Railway Company, Great Northern Railway Company, and Chicago, Burlington & Quincy Railroad Company; W. F. Herrin, P. F. Dunne, N. H. Loomis, W. W. Cotton, P. L. Williams, F. C. Dillard, solicitors for complainants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad

& Navigation Company, Southern Pacific Company, and Oregon and California Railroad Company; James B. Kerr, Hale Holden, solicitors for complainants, Northern Pacific Railway Company, Great North Railway Company, and Chicago, Burlington & Quincy Railroad Company.

57 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Union Pacific Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

WILLIAM A. RAWSON,
[SEAL.] *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Short Line Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

WILLIAM A. RAWSON,
[SEAL.] *Notary Public.*

58 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Railroad and Navigation Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

WILLIAM A. RAWSON,
[SEAL.] *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director and vice president of the Southern Pacific Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

59 STATE OF MINNESOTA,
County of Ramsey, ss:

J. M. Hannaford, being first duly sworn, on oath states that he is the 2nd vice president of the Northern Pacific Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. M. HANNAFORD.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

W. T. FRANCIS,

[SEAL.] *Notary Public, Ramsey County, Minnesota.*

My commission expires April 5, 1911.

STATE OF MINNESOTA,
County of Ramsey, ss:

R. I. Farrington, being first duly sworn, on oath states that he is the second vice president of the Great Northern Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

ROBT. I. FARRINGTON.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

EARLE W. MCELROY,

[SEAL.] *Notary Public, Ramsey County, Minnesota.*

My commission expires April 14, 1911.

60 STATE OF ILLINOIS,
County of Cook, ss:

D. Miller, being first duly sworn, on oath states that he is the 1st vice president of the Chicago, Burlington & Quincy Railroad Company in the above-entitled cause. Affiant further states that he has

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read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

D. MILLER.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] J. H. PETTIBONE, *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon and California Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

(Endorsed:) Filed October 20th, 1908. Henry D. Lang, clerk.

61 Thereafter and on December 16th, 1908, the following demurrer and answer of defendant was filed in said cause in the words and figures following, to wit:

62 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and Oregon and California Railroad Company, complainants, *v.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 883.

Demurrer and answer of Interstate Commerce Commission, above-named defendant, to the amended bill of complaint of the above-named complainants.

(1.)

DEMURRER.

This defendant, the Interstate Commerce Commission, by protestation, not confessing or acknowledging all or any of the matters

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and things in the said amended bill contained to be true in
63 such mann and form as the same are therein set forth and alleged, as to so much of the said amended bill (Par. XIII and Par. XIV, excepting the clause on p. 29, beginning "Your orators aver, etc.") as seeks to aver that the act to regulate commerce as amended June 29, 1906, is unconstitutional and void, does demur thereto, and for cause of demurrer shows that said complainants have not, as appears by said portions of their said amended bill, made out any title to any equitable relief.

Defendant specially demurs to said portion of complainants' amended bill and assigns as such grounds of demurrer:

I.

That the power to prescribe maximum rates to be charged in the future on interstate traffic has constitutionally been delegated by Congress to this defendant.

II.

That the Interstate Commerce Commission, in hearing and considering evidence and arriving at conclusions regarding the reasonableness of rates to be established, proceeds in accordance with due process of law and does not therein or thereby exercise the judicial power invested by the Constitution in the courts of the United States.

III.

That in entertaining complaints for reparation and in
64 granting orders for the payment of money thereon, which orders are prima facie evidence of damages owing to complainant before this defendant, the Interstate Commerce Commission does not exercise such a purely judicial function as is forbidden by the Constitution.

IV.

That the provision of the statute which authorizes the Interstate Commerce Commission to entertain complaints for reparation and to grant orders for the payment of money thereon is entirely separable and distinct from the remaining provisions of the act to regulate commerce as amended, and does not in any wise affect the constitutionality or validity of the remaining portions of the act.

V.

That whether or not in entertaining complaints for reparation and in granting orders for the payment of money thereon, the Interstate Commerce Commission does exercise such a purely judicial function

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as is forbidden by the Constitution can not be drawn in question in this case for that there is no allegation that this defendant has exercised such power.

VI.

That the portion of the act to regulate commerce as amended which provides for penalties for willful disobedience to the orders of the commission is not offensive to the fifth amendment to the Constitution.

65

VII.

That the portion of the act to regulate commerce which provides for penalties for willful disobedience to the orders of the commission is entirely separable from the remaining portions of the statute and does not in any wise affect the constitutionality or validity of the remaining portions of the statute.

VIII.

That whether or not the penalties prescribed in the act to regulate commerce as amended for willful disobedience to the orders of the commission would render the statute in that regard offensive to the fifth amendment to the Constitution can not be drawn in question in this case for that it affirmatively appears that the complainants while seeking relief in this court are observing and obeying the said orders of the commission and are not exposed to prosecution for penalties or forfeitures.

IX.

That in providing for penalties against common carriers violating the act to regulate commerce by disobeying the orders of the said commission the statute does not offend the fifth amendment to the Constitution for that the statute expressly authorizes a suit in the Circuit Court of the United States to enjoin, suspend, or set aside the orders of the commission either before or after such orders become effective, and said statute further confers jurisdiction

66 and lays the venue for the judicial hearing according to established methods before any penalties or forfeitures can be declared, thereby preserving due process of law.

Wherefor for divers other good causes for demurrer appearing in the said amended bill, defendant prays the judgment of this honorable court whether it shall be compelled to make any answer to such parts of the said amended bill as it has hereinbefore demurred to.

(2.)

ANSWER.

And the defendant, the Interstate Commerce Commission, not waiving the said several demurrers, but wholly relying and insisting

thereon, for answer to so much of the residue of the said amended bill as it is advised that it is material or necessary for it to make answer unto, answering says:

I.

Defendant admits the allegations of Paragraph I.

II.

Defendant admits the allegations of Paragraph II.

III

Defendant admits the allegations of Paragraph III.

IV.

Defendant admits the allegations of Paragraph IV.

67 V.

Defendant admits the allegations of Paragraph V that the rates named in said tariffs so filed, published, and posted thereupon became and were the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all the points in the State of Oregon named in said tariffs to each and all the points of destination in said other States named in said tariffs; but defendant denies that the rates named in said tariffs were on November 1, 1907, ever since have been, and now are neither unreasonable nor unjust; and defendant further denies that said rates will continue to be neither unreasonable nor unjust for a period of two years from October 15, 1908.

VI.

Defendant admits the allegations of Paragraph VI.

VII.

Defendant admits the allegations of Paragraph VII.

VIII.

Defendant admits the allegations of Paragraph VIII.

IX.

Defendant admits the allegations of Paragraph IX.

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X.

Defendant admits the allegations of Paragraph X.

68 XI.

Defendant admits the allegations of Paragraph XI.

XII.

Defendant admits the allegations of Paragraph XII, that the effect of the orders so entered by the defendant in said cause 1327, if enforced, will be to reduce the rates established by complainants for the transportation of lumber, shingles, and forest products from points within the State of Oregon to many points in other States 5 cents per 100 pounds, and in some instances more than 5 cents per 100 pounds; but defendant avers that the net result of the enforcement of said orders in said cause will be to leave in full force and effect rates to most of the points embraced in said order, which are materially higher than the rates which hitherto had been voluntarily charged by complainants for many years previous to November 1, 1907.

XIII.

(Entire paragraph in amended bill of complaint covered by special demurrer.)

XIV.

(All of Paragraph XIV in the amended bill of complaint is covered by special demurrer except the clause on page 29 beginning "Your orators aver, etc.")

Defendant denies the allegations of Paragraph XIV, that the rates in effect prior to the effective date of the orders complained of
69 for the transportation of lumber, shingles, and forest products between the points mentioned in said orders, and that each of the said rates are, and will be, for more than three years hence, low, just, and reasonable rates within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law.

Defendant avers that this court can not and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning, but if this court holds it has jurisdiction to make such inquiry defendant denies that said rates are in any respect just and reasonable.

Defendant denies that the rates prescribed by it in and by its orders are, or that any of them is or will be for more than three years hence unjust and unreasonable within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law. Defendant avers that this court can not and will not inquire into the

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matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect unjust and unreasonable.

Defendant further denies that the rates fixed by this defendant are, or that any of them is or will be, to complainants, for the service rendered, inadequate compensation within the aforesaid constitutional guaranty or otherwise.

70 Defendant avers that complainants should not be heard to maintain this suit in equity for that the said complainants have a complete and adequate remedy by proceedings before this defendant in that all the matters and things in the complainants' amended bill set forth are cognizable before this defendant; that upon application of the complainants or of any of them, and upon proper showing, this defendant has power to suspend, modify, or amend in whole or in part the orders complained of and to consider any and all of the matters in the complainants' amended bill set forth and to take such action thereon and to make such order thereon as in its judgment would be proper to make; and that in advance of such application by the complainants to this defendant, the complainants are not entitled as a matter of right to invoke the jurisdiction of this court in equity. Defendant further avers that this court, sitting as a court of equity, should not herein either hear or determine the rights of the complainants upon any state of facts which were within the knowledge of the complainants and which they failed and neglected to present before this defendant at the time of the hearings out of which the orders complained of grew, nor on account of any facts, matters, or things which may have arisen since said hearings, except such facts, matters, or things be first presented by application for rehearing or otherwise to this defendant. Neither does said amended bill of complaint set forth any reason why any of such matters and things could not be or were not presented to this

71 defendant, nor that any facts, matters, or things have arisen since the said hearings, nor that the complainants, or either of them, have in any manner been prevented from presenting to this defendant for its consideration any of the matters or things in the complainants' amended bill set forth. Complainants have failed to make any application to the defendant for a rehearing of said matter, on account of any such facts, to have said orders suspended, set aside, or modified, although complainants well knew at all times since June 2, 1908, the date of the report of the defendant, that the orders complained of would be issued as a matter of course unless upon application of the complainants here (defendants before the commission) such facts should be shown to this defendant as would entitle complainants to have said orders suspended, modified, or set aside.

Defendant further avers that this court ought not to consider the averments in complainants' amended bill of complaint that the transportation of traffic on rates prescribed by the defendant will not afford a fair compensation or will entail a loss, or that the same are

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unremunerative, or that the same are unjust and unreasonable for the service performed, because such allegations and declarations are statements of conclusions and opinions of interested parties and do not have coupled therewith any statement of any of the essential elements of facts upon which or from which the reasonableness of a rate can be determined. Defendant further says that it is vested

72 with the exclusive right and power of determining what are just and reasonable maximum rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry upon original evidence leading to an independent conclusion; that in determining what are just and reasonable maximum rates to be charged in the future this defendant must and does exercise discretion; that this court ought not and can not substitute its judgment and discretion for the judgment and discretion of this defendant; that this court will only determine whether the rates prescribed by this defendant are just and reasonable within the meaning of the constitutional guaranty which compels the establishment of rates with reasonable regard for the cost to the carrier of the service rendered and for the value of the property employed therein, and also with reasonable regard for the value of the service to the public. This defendant further says that the complainants do not aver in their amended bill that they or either of them are in possession of any information or facts upon which to base the said conclusion that the rates established by this defendant are unjust and unreasonable, other than the facts and evidence which were presented before the defendant in the hearing out of which the orders complained of grew, all of which facts and evidence were presented to this defendant and were by it duly considered. Defendant shows that the ascertainment

73 mathematically of what it costs to haul a given quantity of traffic of a certain description between two points upon a certain line of railway is impossible; that over the same line of railway, hauled by the same engine, are carried in the same train traffic in varying quantities widely different in character and value; that over the same line of railway is hauled both freight and passenger traffic in different trains of varying size; that the fixed charges of maintenance and operation can not be apportioned with mathematical exactness to the one kind of traffic or to the other; that in the same train over the same line of railway are hauled both interstate and intrastate traffic; that the cost of operation and of handling these two classes of traffic can not be mathematically determined so as to apportion to each class of traffic its proper division of cost; that while a considerable proportion of cost and expense can be located to the particular service or the particular traffic in a given instance, yet that varies materially with conditions on particular lines of road with the volume, density, and direction of movement; and that no method of apportionment between different articles of freight can be devised except that which involves the exercise of discretion and judgment, results varying according to the method used.

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Defendant therefore says that the statements and allegations of Paragraph XIV of the amended bill above referred to are mere allegations and opinions which involve consideration of all these complex and difficult problems and should not be accepted for the purpose of setting aside the orders of this defendant.

74 XV.

Defendant denies that complainants have at no time prescribed rates for the transportation of lumber, shingles, and forest products between the points named in said orders in excess of charges which were just and reasonable. Defendant denies that upon the hearing before it in said cause in which said orders were so entered no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust, or unreasonable; denies that the defendant entered its orders without any justification therefor and without any evidence or finding of fact that said rates so complained of were excessive, unjust, or unreasonable. On the contrary, defendant avers that evidence was introduced before this defendant showing, and tending to show, that the rates complained of before this defendant and condemned by it in the orders in question, were unjust and unreasonable, and this defendant, after a full hearing afforded to all the parties to the complaint before it, was of the opinion that said rates so complained of were unjust and unreasonable and entered its orders accordingly. Defendant avers that in accordance with the statute in such cases made and provided, it made a report in writing in respect to the matter under investigation, which report stated the conclusions of this defendant, together with its decision, order, and requirement in the premises. Said report or opinion is attached hereto as Exhibit A,
75 and is made part hereof as fully as if the same was set forth in full in this paragraph of the answer. Defendant says that the facts shown by said investigation material to be considered by this defendant are stated fully, fairly, and completely in said report.

Defendant further says that every opportunity was afforded to complainants herein in the hearing before this defendant to introduce any and all testimony and evidence which in any wise was pertinent to the matters involved in said hearing and that at said hearings complainants herein declined to introduce further testimony and announced to this defendant that they had no further evidence to offer, and so rested their case on the evidence before this defendant.

Defendant further says that while the matters and things embraced in what is known as docket No. 1327 were pending before this defendant there were at the same time pending similar matters and things in what is known as dockets Nos. 1329, 1331, 1335, 1348, and 1054, and that by agreement of counsel in case No. 1327, to which complainants herein were parties defendant, any and all matters and things presented to this defendant in the hearings in said other cases

might, and should, be considered by this defendant with the same force and effect as if the same had been formally presented and made part of the record in No. 1327.

XVI.

Defendant denies the allegations of Paragraph XVI.

Defendant avers that the conclusions sought to be drawn
76 from said testimony tending to show the facts stated in said paragraph were strongly and earnestly controverted by complainants in the hearing before this defendant, and much testimony in opposition to the claims of the defendants in the hearing before this defendant was introduced, and that there was some conflict in the testimony and evidence before this defendant. Defendant further avers that each and every member of the Interstate Commerce Commission fully realized the great importance of the issues involved in the complaint before this defendant; that each and every member of this defendant gave personal attention to all the testimony offered upon either side during the several days occupied in the taking of testimony, and afterwards heard all parties at great length in oral argument; and that the members of this defendant carefully examined and considered the various matters of fact and argument contained in the voluminous briefs filed by each party to the hearing before this defendant. Defendant further avers that the orders complained of in this amended bill of complaint, and the report and opinion attached hereto and made a part hereof as Exhibit A, are the result of the most painstaking consideration and care on the part of each individual member of this defendant.

This defendant avers that by the statute it has been authorized and required to perform certain duties; that in the distribution of the powers of government this defendant is required to determine,
in cases like that heard by it (out of which the orders com-
77 plained of in this case grew), what shall be the just and reasonable transportation charge to be charged by carriers subject to said act for the future; that authority to determine that issue could not be under the Constitution of the United States conferred upon this court, and, even if it could be so conferred, such power and authority has not been so conferred by any existing law.

Defendant further avers that it is both the right and the duty of this court to protect these complainants against arbitrary and unlawful exercise of authority conferred upon this defendant. Yet, this court ought not, and will not, review the judgment and findings of this defendant unless it be made clearly to appear that the orders complained of transcend the pale of legitimate regulation and constitute such a violation of the constitutional rights of the carrier as to shock the conscience of a chancellor.

Defendant further avers that the establishment of a rate of transportation for the future involves the exercise of discretion and judg-

ment; that Congress has attempted to establish in this defendant an expert tribunal for determining questions of this character; and that this court will not undertake to say whether, upon all the facts existing in this case, it would have arrived at a different conclusion upon the facts presented as to what the rates should be for the future.

XVII.

Defendant denies the allegations of Paragraph XVII, that the rates in effect on November 1 and 2, 1907, are lower than the
78 rates charged for like service by any carrier in the United States, and lower than rates heretofore fixed by this defendant for like services. Defendant denies that the rates fixed by the orders of this defendant are unremunerative and confiscatory in any sense. Defendant avers, on the contrary, that the rates established by the orders complained of are higher than the rates voluntarily established by the carriers for the same transportation covering a long period of years. Defendant avers that the complainants herein during the last ten years have received from their operations as common carriers munificent returns upon the property invested, and that said returns upon the property aforesaid are far above the average received by carriers in other parts of the United States.

Defendant avers that it is unable to determine from the amended bill of complaint what the complainants regard as constituting cost of conducting transportation. Defendant denies that the rates fixed by the orders of this defendant are not, and will not be, sufficient to pay the cost of conducting transportation and any just or fair return upon the value of the property used in said transportation, no matter whether complainants refer to the mere cost of hauling the traffic or whether complainants refer to the proportion of fixed charges properly attributable to said transportation and the cost of operating such transportation.

Defendant further avers that in considering what is a just
79 and reasonable rate for the future many things are to be considered; that one of these is the question as to what extent the traffic covered by the orders of this defendant shall contribute to the total profit of the complainants herein.

Defendant admits that the enforcement of the orders complained of involves to each of the complainants an amount in excess of $2,000 per year.

Defendant therefore avers, in conclusion, that in the making of the orders complained of this defendant considered every material fact and circumstance which it should have considered, and failed to consider no material fact or circumstance which it should have considered.

XVIII.

Defendant avers that the allegations of complainants' amended bill of complaint are vague and uncertain; that they do not set forth facts with sufficient certainty to show the conclusions which are

therein stated, to the effect that the rates prescribed by this defendant in its orders complained of will require transportation at less than the cost of service, or at a loss to the carrier, or that the same will be unremunerative, or that the same are unjust and unreasonable, or that the same is confiscatory; and that because of the failure on the part of the complainants to specify the particular items of returns from said rates and the particular expense incident to the transportation mentioned in the defendant's order the defendant is unable to know what complainants expect to show at final
80 hearing, or otherwise, and on this account is not able more specifically to answer the general allegations, averments, and conclusions of the amended bill of complaint; and the defendant says that it ought not to be required to answer such allegations.

The defendant therefore denies each and all of the allegations of complainants' amended bill of complaint not otherwise specifically denied herein, and which defendant is advised is material or necessary to be answered, and says that the conclusions, inferences, and arguments are erroneous and without foundation, and that the rates which this defendant prescribed are in all things just and reasonable and will afford to each of the carriers complainant a just compensation in all instances for the service performed.

The defendant denies that the complainants are in anywise entitled to the relief, or any part thereof, prayed for in said amended bill of complaint, or any relief whatsoever; and the defendant claims the same advantage of this, its answer thereto, as if it had demurred to said amended bill of complaint and prays to be dismissed, with its reasonable charges in this behalf most wrongfully sustained.

INTERSTATE COMMERCE COMMISSION,
By ——— ———
Secretary thereof, thereunto duly authoried.

81 I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

L. M. WALTER,
Solicitor for Defendant.

WASHINGTON,
District of Columbia:

Edward A. Moseley, being first duly sworn, says on oath that he is the secretary of the defendant; that he knows the contents of the foregoing demurrer and answer; that the said demurrer is not interposed for delay; and that the matters and things stated in the answer are true to the best of his knowledge and belief.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Solicitors for Defendant.

Subscribed and sworn to before me this the ——— day of December, 1908.

———,
Notary Public.

82 EXHIBIT A.

83 *Interstate Commerce Commission Reports.*

No. 1327.

OREGON & WASHINGTON LUMBER MANUFACTURERS' ASSOCIATION ET
v.
UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted March 21, 1908. Decided June 2, 1908.

1. On or about November 1, 1907, the roads running east from timbered sections of Oregon, Washington, British Columb Idaho, and Montana, together with their connections, rai the rates upon lumber, shingles, and other forest products nearly all destinations in the United States in which t lumber finds a market. The increase in rates was not u form to all points, but in a great proportion of instances equaled 20 or 25 per centum of the rates theretofore in eff The rates so increased had been substantially the same si 1893, when the Great Northern Railway Company establis eastbound rates upon lumber and other forest products wh would move the traffic to points where it could find a mar in competition with like products from other sources of supp and which would thus give loading for cars that were be hauled east empty. The lumber industry in the Pacific nor west grew to enormous proportions and generally was hig profitable. Large numbers of men were employed, and v amounts of capital were invested therein.
2. The increase in rates came substantially contemporaneously w the effect on the Pacific coast of the financial depression 1907. A great portion of the lumber mills were obliged shut down and practical stagnation in the lumber trade ensu The lumber manufacturers and shippers united generally complaint, in this and other proceedings, against the increa rates, alleging them to be unreasonable, unjustly discrimi tory, and unduly prejudicial to them, to the industry, and the locality.
3. Rates lower than those increased in November, 1907, had been effect via the lines of some of the defendants since 1889. T volume of business on the lines of defendants had multipli Enormous sums had been expended from income from ope tion in permanent improvement of their properties. Libe dividends had been paid for a series of years, and in addit thereto large sums had been carried to surplus accounts.
4. Lumber moves in large quantities, is loaded by shipper and loaded by consignee, is shipped in both closed and open ca is loaded to a high minimum carload weight, does not requ

especial or expedited movement, is not easily injured in transit, causes few damage claims, is, so far as transportation is
84 concerned, a low-grade commodity, and it should move at low rates, especially when the haul is long, as it is in this case. The prosperity of the shippers' business is no gauge with which to measure the reasonableness of transportation rates.
5. *Held*, that the increase in rates was so great as to result in unreasonable rates. Part of said increase condemned and a more equitable adjustment of rates prescribed. Reparation awarded.

Teal & Minor and Dysart & Ellsbury for complainants.

James B. Kerr, Hale Holden, F. C. Dillard, and W. W. Cotton for defendants.

Report of the Commission.

CLARK, Commissioner:

Complainant, Oregon & Washington Lumber Manufacturing Association, is a corporation organized for the purpose of upbuilding the lumber manufacturing interests of the Pacific coast. Its stockholders consist of many persons, firms, and corporations engaged in the manufacture and interstate shipment of lumber, shingles, and kindred forest products from the State of Oregon and adjacent points on the Columbia River in the State of Washington. A list of said stockholders is annexed to the complaint, and complainant brings this proceeding in behalf of said stockholders. The other complainants are corporations engaged in the same business in the State of Oregon. Defendant common carriers transport said forest products from the various points of origin en route to destinations in the several markets in other States where complainants dispose of their output.

The complaint alleges that an advance in the rates on lumber and other forest products established by the defendants and other participating carriers from North Pacific coast territory to the various intermediate and terminal points hereinafter mentioned is unjust, unreasonable, and unjustly discriminatory to complainants. Restoration of the old rates, and reparation for all charges in excess thereof, are prayed for. The defendants admit the advance in the rates; allege that the former rates were unreasonably low and unremunerative, and that the advanced rates are just and reasonable.

The new rates were established by T. C. F. B. Tariff, I. C. C. 850, effective November 1, 1907. This tariff applies from Pacific coast territory to Chicago and to intermediate basing points and territories, and while the benefit of the advance accrues entirely to the roads west of the Missouri River and of St. Paul, it in effect advances the rates to nearly all points in the United States in which coast lumber products are sold.

Defendants Astoria & Columbia River Railroad Company, Oregon Railroad & Navigation Company, and Great Northern Railway Company in connection with other participating carriers filed tariff,

I. C. C. a–2667, effective November 1, 1907, making the same
85 advance in rates on lumber, shingles, and other forest products from the Pacific coast to North Dakota and other localities.

The Northern Pacific Railway Company in connection with the Butte, Anaconda & Pacific Railway Company filed tariff, I. C. C. a–3432, effective November 2, 1907, advancing the rates on said forest products from points of production to Montana and points west thereof. The rates in the superseded tariffs have in each instance been in effect substantially since 1893.

The different points of production of the various complainants and members of complainant Lumber Manufacturing Association are so numerous that it is impracticable to set out the rates from each particular point. Generally speaking, the rates superseded by the advanced rates applied from points within the States of Oregon, Washington, Idaho, and Montana, and in British Columbia, to the territory covered by the following representative points: St. Paul and common points, Chicago and common points, Mississippi River common points, Missouri River common points, St. Louis and common points, western Missouri and southeastern Kansas, Denver and common points.

The following table shows, in cents per 100 pounds, the old and the new rates from the north Pacific coast to said representative destinations on the several kinds of forest products:

Commodity.	Chicago and common points.		Mississippi River common points.		St. Louis and common points.		St. Paul and common points.	
	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.
Shingles	60	70	60	70	62½	70	50	60
Cedar lumber	60	70	60	70	62½	70	50	60
Fir, hemlock, spruce, larch, etc	50	60	50	60	52½	60	40	50
Long timber requiring 2 or more cars	60	70	60	70	62½	70	50	60

Commodity.	Missouri River common points.		Denver and common points.		Salt Lake, Utah, and common points.		Western Missouri and southeastern Kansas and common points.	
	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.
Shingles	60	65	55	60	45	55	62½	67½
Cedar lumber	60	65	50	60	40	55	62½	67½
Fir, hemlock, spruce, larch, etc	50	55	40	50	40	45	52½	57½
Long timber requiring 2 or more cars	60	65	50	60	40	55	62½	67½

Practically the same increase was made to points intermediate to above destinations.

When the lumber interests of Oregon were in their infancy, except for purely local consumption, the mills disposed of their surplus at points reached by water transportation, and the volume of business

was small for a considerable time, even after the railroads reached the coast. In 1889 a 40-cent rate on fir lumber was established by
86 the lines of the Union Pacific system from Portland to Denver, Pueblo, and other Colorado common points. A 45-cent rate was established in 1893 from Portland to Council Bluffs and Omaha and main-line stations on the Union Pacific in Nebraska. This rate was effective until April 15, 1901, when it was raised to 50 cents, but this included Sioux City and Kansas City and points west thereof. The 50-cent rate to Chicago and the 52½-cent rate to St. Louis were established concurrently with the 45-cent rate to Omaha. It will be observed that the 40-cent rate to St. Paul has never been met by the rates to any of the Missouri River crossings. The Montana-Oregon rate basis prevailed from points of origin in Oregon east of the Blue Mountains, which gave rates that were substantially 5 cents per 100 pounds lower than the rates from the coast points.

Under the old rates the lumber interests increased enormously, and many mills were built in the interior, where they were solely dependent upon rail transportation; and, except a limited number of mills situated at points like Portland, a great majority of the mills interested in this complaint are wholly dependent upon the railroads for an outlet to the markets.

The amount invested in the lumber business in the State of Oregon, exclusive of material, logs, standing timber, and timberland, is stated to be about $60,000,000, and approximately 40,000 persons in said State are directly engaged in the industry. The annual pay roll exceeds $20,000,000. The annual output of lumber exceeds 2,000,000,000 feet, and its value at the mill is approximately $30,000,000.

The superseded rates were made voluntarily by the carriers, the St. Paul rate having been inaugurated by the Great Northern in 1893, at a time when its empty-car movement was east bound and for the alleged purpose of getting loading east for those empties. The Northern Pacific and other lines in the territory affected by it were obliged to meet that rate in order to handle any of that business. It is shown that now the empty-car movement is west bound, and defendants contend that it is due wholly to the increased output of lumber. Other western products for eastern markets, as well as Asiatic import traffic, have also increased, and the record does not show what proportion of the predominating west-bound empty-car movement is due to increased lumber production.

It is without dispute that the lumber interests have been extraordinarily prosperous in the past few years, and that, generally speaking, the business has been profitable ever since the 40-cent rate to St. Paul was established in 1893. At that time, however, stumpage was very low, some purchases being made at 25 cents per 1,000 feet. This low price continued for some time after that date, and comparatively few of the mills took advantage thereof. As the
87 area of the white pine in Wisconsin, Minnesota, and Michigan decreased, the value of the Pacific coast stumpage increased,

and the same may be said to be true as to the yellow-pine stumpage of the Southern States. The increase in the price of Pacific coast stumpage has been gradual since 1893, although the greatest increase has occurred since 1902, and the larger part of that has taken place since 1905. The price in Oregon prior to the advance in the rates ranged from $1.50 to $2.50 per 1,000 feet, and along the Columbia River it was as high as $3. The majority of the millmen own their stumpage, but the majority of the stumpage is not owned by the millmen. Many large tracts are held by individuals and corporations that are not engaged in the manufacture of lumber. The price of logging has been gradually increasing, until it now costs between $5 and $6 per 1,000 feet to get logs to the mill. In some parts of Oregon it is even higher. The price of logs in the open market has likewise increased since 1893 from $2.50 and $3 per 1,000 feet in that year up to $6 in 1900. That price continued until 1902, with various increases and fluctuations following to 1904 and 1905, when the price reached $9. Following the Valparaiso and San Francisco disasters, the price increased during 1906 and 1907 to $13.50 per 1,000 feet. After the announcement was made that the lumber rates were to be advanced, the price of logs fell off $1 per 1,000 feet in the month of July, 1907; the next month the price dropped $1.50, with a corresponding fall in the following month, making the total decrease from August to December $4 per 1,000 feet. At the time of the hearing fir logs were sold for $9 per 1,000 feet in Portland, including 50 cents towage.

The cost of manufacturing lumber has kept pace with the increased cost attendant upon all other industrial pursuits. From 1904 to 1907 the advance has been 35 or 40 per cent in both labor and material. The increase in labor exceeds the increase in material, but the two make about the average stated.

During the year 1906 the mill men's average profit per 1,000 feet of all classes of lumber produced by them ranged from $1.60 to $2.80. The lower profit was made by the mills that bought logs in the open market or those operating where the logging was more expensive. The higher profit was made by those mills that owned their own stumpage, for which they charged themselves from $1 to $1.50 per 1,000 feet. Some of the same mills that made a profit of $2.80 per 1,000 feet in 1906 made a profit of 28 to 50 cents per 1,000 feet in 1905, and it is claimed that the increase in the price of lumber was due to the unusual prosperity of 1906, coupled with the extraordinary demand caused by the Valparaiso disaster and the San Francisco fire and earthquake. It is insisted, however, that the increase in the price of lumber did not equal the increase in the price for logs. The mills in Washington, both along the Columbia River and on Puget
88 Sound made greater profits than this by reason of the superior quality of the logs, but the figures herein given fairly represent the profits of the lumber interests in the territory covered by this complaint as stated in the record. The average weight of 1,000 feet of common lumber is about 2,800 pounds. The finished classes that have been kiln-dried weigh considerably less, or approximately

2,000 pounds per 1,000 feet. The long heavy timbers and rough green lumber weigh between 3,000 and 3,300 pounds per 1,000 feet. In 1893 the minimum carload weights were very low. From time to time these minima have been increased until now the minimum for closed cars is the marked capacity of the car or the cubical contents thereof; and for flat cars 60,000 pounds, unless the marked capacity is less, in which event the minimum is 5 per cent less than marked capacity. It is testified that the average weight of the carloads is 58,000 pounds.

The forest products of the Pacific coast compete in all of the territory covered by the rates in controversy with yellow pine, cypress, and a limited amount of white pine. Transportation rates from the white-pine and yellow-pine producing points to such competing territory are materially less than the rates from the Pacific coast, but the distances from the yellow-pine and white-pine territories are also materially less. Under the old rates the Pacific coast lumbermen were able to compete with yellow-pine and white-pine lumber in competitive territory and absorb the difference in freight rates in their profits. They now insist that the increase of 10 cents per 100 pounds destroys their entire profit and that the advance in the rates will prevent all competition in the territory affected by the advanced rates. On the long timbers, however, there is little or no competition from other producing points, but it is claimed that the increased rate will increase the cost to a point that will prevent their use and cause substitutes to be used for them, and that the same is true of shingles and spruce lumber. Under the old rates the cost of a carload of lumber at the mill practically equaled the freight thereon to Pittsburg. The greater part of the common lumber finds its market locally or in the nearby States and in Colorado, Nebraska, and North Dakota. Comparatively little of it gets into the Missouri River and Mississippi River territory. Common lumber is produced wherever lumber is manufactured, and, naturally, the supply of that grade of lumber equals the demand for it at all places where lumber from competitive fields of production reaches the same market. A certain portion of the lumber manufactured on the North Pacific coast can compete successfully with other lumber in any markets. They there produce certain dimensions and qualities that are produced to but a limited extent, if at all, elsewhere. These qualities are the choice portions of the logs and necessarily in producing them a large quantity of common lumber is also produced or a great waste of material occurs. The widest possible market for their medium and common lumber is what the North Pacific coast lumber men need most and every market that can reasonably be opened to their common lumber operates to lessen the waste and destruction in the natural supply. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates. The combined North Pacific coast interests market about 5,000,000,000 feet annually, as against approximately 19,000,000,000 feet of southern pine and white pine, which shows

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that the latter two predominate and fix the price in competitive markets. It is alleged by yellow-pine dealers that an advance of 5 to 10 cents per 100 pounds in their freight rates would drive them out of competitive territory.

It is insisted by the defendants that the advance in the rates will not affect the entire output of the North Pacific coast, because at least 50 per cent of that output does not reach the affected territory. But it is clear that Pacific coast lumber sold in that territory must be the surplus that can not be advantageously sold in the nearby markets, and if that surplus is thrown into the nearby markets a lowering of prices would inevitably flow from the elementary economic law of supply and demand.

It appears that a great many of the mills had closed down prior to and at the time of the hearing, resulting from lack of business even before the financial depression was felt on the Pacific coast. A salesman of one of the larger mills testified that on a trip where he would ordinarily take orders for 300 to 500 cars of lumber he was unable to get an order because he would not guarantee the old freight rates, and that he could have made sales had he guaranteed the old rates. It also appears that dealers as well as purchasing agents of railroads were refusing to buy on the ground that after the advanced rates became effective there would be a falling off in the prices of lumber, caused by the surplus that would exist in the producing territory which could not reach its former competitive markets under the advanced rates.

A great deal of evidence was offered, together with many statistical exhibits, showing the cost of railways, the cost of operating them, and their gross and net incomes, with estimates of the cost of the service rendered in transporting lumber. It is impracticable to set out in detail those facts and figures, but it may be safely said that all the carriers involved in this complaint show in their reports large incomes and large surplus earnings over and above the cost of operation, maintenance of way and equipment, depreciation thereof, fixed charges and various sinking funds for extension of lines and
90 retiring of bonds, and reasonable dividends upon the amounts invested. See report in Pacific Coast Lumber Mfrs. Asso. et al. and Southwest Washington Lumber Mfrs. Asso. et al. v. Nor. Pac. Ry. Co. et al., infra.

From this it appears that the schedule of rates applying to each defendant line, as a whole, furnishes sufficient revenue. The density of traffic on the defendant lines has increased to such an extent that it is more than can be advantageously handled on single-track roads. Double-track extensions are now in progress on some of them, and it was claimed by defendants at time of hearing that within seven months they would be able to handle all traffic offered.

The expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials. The increased business has required additional working force and equipment, which has helped to swell the total expenditure, but the extra

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expense of increased force and added equipment has found reward in increased business. Defendants say that in 1895 it required twenty days to move a carload of lumber from the coast to Minnesota Transfer, but that in 1906 it required forty-four days for the same service, and therefore the carriers are now giving the use of the car forty-four days, where under the old rate but twenty days were required, and that the shippers should pay for this extra time. This proposition is distinguished by its novelty. If a carrier's rate were to be increased in proportion to the time consumed in the transportation, a premium would be offered for the establishment of the slowest possible schedules. Increased volume of business and greater density of traffic have always been regarded as factors entering into reduction of rates, but if when the traffic offered exceeds the capacity of the carrier's equipment rates are to be increased the prosperity of the country and the development of industries and markets will depend solely upon the willingness of carriers to furnish equipment.

In 1906 the Great Northern, by reason of snow blockades, expended over $950,000 in addition to loss through suspension of traffic. During the same year its expenses were increased approximately $1,200,000 for fuel and other supplies, $1,000,000 for station service and additional train service, and $800,000 for advanced wages. The increase in wages for that year was one of the smallest items of the unusual expense incurred by that carrier. Weather conditions for the same year correspondingly increased the expenses of the Northern Pacific. Its increase in wages was practically the same as that of the Great Northern. The Union Pacific and Southern Pacific systems suffered from disastrous floods that washed away many miles of track and numerous bridges and seriously interrupted the movement of traffic for over four months. The increase in operating expenses of the Union Pacific was approximately 15 per cent, but as over
$2,000,000 were charged to operating expenses for the previous
91 year and credited to a reserve fund for future maintenance and
renewals and not used in 1906, but likewise charged to the expenses of 1906, the total increase is stated at 22.75 per cent. However, the Southern Pacific decreased its ratio of expenses to earnings during that period. The years 1906 and 1907 were unusual as to volume of business and increase in the cost of operation, both in the lumber and the railroad business.

The defendants offer a statement showing the cost of moving a loaded freight car 1 mile for the year ending June 30, 1907, on the different roads, as follows:

	Cents.
Northern Pacific Railroad Company	12.9
Great Northern Railroad Company	12.73
Chicago, Burlington and Quincy Railroad Company	15
Oregon Railroad and Navigation Company	19.3
Illinois Central Railroad Company	10.9

This result is arrived at by taking for each system its total mileage of loaded freight cars as the equivalent of moving one loaded freight car that total number of miles. (Hinckley Exhibit No. 3.)

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The figures pertaining to the Northern Pacific are sufficiently typical for illustration. Its total mileage of loaded freight cars was 309,504,759; operating expenses, $37,601,938; taxes, $2,398,719; total operating expenses and taxes, $40,000,657. The total operating expenses are divided by the total loaded freight car mileage, which gives the result of 12 cents 9 mills for moving a loaded freight car 1 mile. It is apparent that this statement can not be relied upon as the basis for accurately determining such cost. There is nothing to show the cost of the passenger service nor how much for maintenance and equipment is embraced in the total expense. After one year under the new system of accounting it will be possible to make an intelligent comparison of a carrier's accounts with its accounts for previous years, and after two years intelligent comparisons can be made with similar charges on the lines of other carriers.

However, if this estimate of the cost of moving a loaded freight car 1 mile is applied to the list of commodities shown on page 119 of defendants' brief, which includes canned goods, dried fruit, hops, and green hides, it will be found that the rates thereon from Pacific coast points to all points east of Omaha would not yield more than the cost of transportation, and to farther distant points the traffic would produce a loss. Lumber, under the 40-cent rate from Portland to St. Paul, would be carried at a loss. Manifestly this statement can not be accepted as determining with accuracy the cost of the lumber transportation.

Another statement offered by the defendants shows the passengers and the tons of freight moved 1 mile on the lines last above
92 mentioned. The figures pertaining to the Northern Pacific will again be used. That line moved 5,504,444,098 tons of freight 1 mile and carried 722,745,259 passengers 1 mile. (Hinckley Exhibit No. 1.)

Dividing the total number of tons of freight that moved 1 mile by the mileage of loaded freight cars shown and it gives 18 tons as the average load per car. The average load of lumber is 29 tons. There is diversity of opinion as to whether it costs more to carry a passenger 1 mile than it does a ton of freight 1 mile, but the majority of freight traffic men contend for the former. Assuming, however, that they cost the same, and treating the passengers carried 1 mile as so many tons of freight, and we have the total number of tons of freight moving 1 mile, 6,227,189,347. The average load of the cars in his Exhibit No. 1 was 18 tons, and if we divide the sum of the tons mileage and the passenger mileage by that number we will have 345,954,963 cars moving 1 mile. Dividing the total expenses by that number gives 11.56 cents as the cost of moving a car loaded with 18 tons 1 mile. The distance from Portland to St. Paul via the Northern Pacific and Great Northern is 2,014 miles, and the old rate was 40 cents, making the per ton per mile revenue 3.97 mills. The average load of lumber is 29 tons, which would make the income for 1 mile 11.51 cents, or a loss of .06 of a mill per mile. From Seattle and Tacoma under the old rate, and using same cost per car, the lumber would yield about

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$20 per car profit. These figures show the fallacy of estimates, because the relative cost of moving a passenger and a ton of freight 1 mile is largely guesswork, and the tonnage loading of the cars, 18 tons, used in arriving at number of loaded cars moved 1 mile, is away below the average. However, if the same estimated cost of moving a loaded car per mile is taken and compared with the earnings per mile of a loaded car of lumber from Portland to Omaha under the 50-cent rate, we find that a 29-ton car will yield 16.09 cents per mile. Taking as the cost 11.56 cents, we have 4.53 cents profit per car per mile. Multiplying the distance from Portland, 1,799 miles, by the profit per car per mile, we have $81.49 profit per car.

Another statement offered by defendants shows that the gross earnings of the Northern Pacific for 1907 were $68,447,454; that its passenger earnings were 28.03 per cent of its gross earnings, or $19,192,008; expenses of operation, including taxes, $40,000,657, or 59 per cent of gross earnings. If the ratio of expense of carrying the passenger traffic to its gross earnings is the same as the ratio of expenses of total operation to total gross earnings, then we may deduct 59 per cent from the gross passenger earnings as the expense of handling the passenger traffic. Then taking that from the total cost of operation and dividing that remainder by the total number of loaded cars moving 1 mile, and we get 9.31 cents as the cost of moving a loaded freight car 1 mile. (Hinckley Exhibit No. 2.)

93 As before observed, the rate on lumber per ton per mile from Portland on the Northern Pacific and Great Northern mileage is 3.97 mills. A 29-ton car would produce 11.51 cents per mile. Deduct the cost of moving the loaded car 1 mile and we have 2.20 cents per mile profit. Multiplying that by 2,014 miles, we have $44.30 profit per car. This same result is obtained if we say that the gross passenger earnings, being 28 per cent of the gross earnings, should bear 28 per cent of the total expense of operation. These calculations show how easy it is to play with figures and make them prove almost any desired result.

The defendants also offer another statement showing the tonnage of and revenue from Pacific coast lumber and shingles under the old tariff as compared with the tonnage of and revenue from all other freight. The year 1906 will be taken for illustration. The exhibit shows that 1,765,095,997 tons of Pacific coast lumber and shingles moved 1 mile, constituting 33.65 per cent of the total ton mileage of the Northern Pacific Railroad for the year; that 3,480,164,083 tons of freight moved 1 mile constituted all other freight ton mileage for that year and equaled 66.35 per cent of the total freight moving 1 mile. The lumber, which was practically one-third of the ton mileage, produced 18.55 per cent of the total freight revenue. The remaining ton mileage, practically 66⅔ per cent, produced 81.45 per cent of the total freight revenue. (Johnson Exhibit No. 6.)

An examination of another statement offered by the defendants shows that the ton mileage of the lumber and shingles referred to was eastbound and that the remaining ton mileage refers to all other

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freight east and west bound and all other lumber and shingles westbound. If the eastbound lumber tonnage had produced 14.78 per cent more of the total freight revenue, it would have produced the same percentage of revenue as all other freight. Complainants contend, however, that the statement omits at least $5,000,000 income from westbound lumber transportation. If it be said that lumber, and, as in this illustration, eastbound lumber, must furnish the same percentage of income as all other freight, then one of the factors so long contended for by defendants as a canon in rate making—the lower the grade of and less expensive the commodity the lower the rate made thereon—will have to be ignored—a conclusion, we think, that defendants would be the first to condemn. (Johnson Exhibit No. 11.)

Numerous comparisons have been furnished showing the rates from the yellow-pine producing points to the territory affected by the advanced rates. They throw little if any light upon the question at issue except to show the ton per mile rates. In every instance, however, the haul from the yellow-pine producing point is so materially less than the distance from the Pacific coast points that the
94 comparison is of little value. For hauls of the same distances the defendants receive, under the old rates per ton per mile, revenue greatly in excess of the per ton per mile revenue from the yellow-pine points. On the yellow-pine rates to Denver the per ton per mile revenue is less than the per ton per mile revenue from the Pacific coast to Denver, and is likewise less than the per ton per mile revenue under the old rates from the Pacific coast points to Omaha, and the distance in the latter case is considerably in excess of the distance from the farthest yellow-pine point to Denver.

The defendants offer in evidence a statement comparing the rates on other commodities with lumber. The commodities selected were canned goods, dried fruit, wool, hops, and green hides, and were based on rates to Denver, Omaha, Kansas City, and Chicago. Figuring the rate on the minimum carload weight of each of the commodities referred to and the income per car under the old rates to the same points, with the exception of Denver, the income from a car of lumber to the points named either equals or exceeds the income from the other commodities except dried fruit. Carrying the comparison to New York, under the old rates a carload of lumber would produce more than a carload of any of the other commodities. In fact, there is very little movement of canned goods west of Kansas City—the great bulk goes to Chicago and to the East. St. Louis, Milwaukee, and points in New York furnish the markets for hops. Wool moves to Boston, and hides largely to Manistique, Mich., while dried fruit moves to Kansas City and the East. Every commodity used for comparison, except hides, is covered by a blanket rate from Denver to New York City. The rates on lumber range from 40 cents per 100 pounds at Denver to 70 cents at New York.

Complainants insist that the exhibits show an unfair comparison and defendants in their brief likewise say that the comparison is

unfair if the minimum carload weights are used, but if the average car weights of the various commodities are used it will show that the revenue per car on the other commodities, carload, exceeds the revenue per car on lumber. The weights, however, are considerably in excess of the minimum, and while the average weights taken may fairly illustrate the freight paying weight of the various commodities, yet the tariffs establish the minimum weights.

The defendants also offer another exhibit comparing the earnings on other commodities with the earnings on lumber from the Pacific coast to Minnesota Transfer. Copper is taken for the period January 1 to September 30, 1907, from Crofton, and April 1 to September 30, 1907, from Grand Forks. Salmon is taken from all points from January 1 to September 30, 1907. Silk and matting from Asia from April to June, 1907, and to September 30, 1907, while lumber and shingles are taken for the month of August, 1907.
95 Copper is the only one of the commodities that bears any relation to lumber, and as the rate on that is based on carrier's limited risk of $100 per ton, and as the average car is about 36 tons, when risk and values are compared, it is of little worth as a guide to the rate on lumber.

The parties are not in harmony as to the cause for the advance in the rates in controversy. Complainants say that the justification for the advance, so far as the Union Pacific and Southern Pacific systems are concerned, rests upon these propositions: First, that the lumber business was prosperous and could stand the advance in rates; second, that the rates were largely experimental, and if they did not work they could be taken out. The Great Northern and the Northern Pacific justify the advance, first, upon the advance in the prices of fir lumber; second, upon the change in the empty-car movement; and third, the increased cost of operation. The defendants specially justify the advance on the following grounds: That the old rates were unreasonably low as compared with other rates made by defendants, and were probably below the cost of the service; second, that the old rates were so low as practically to discriminate against other traffic and that the new rates are less than might reasonably be charged for the carriage of lumber; third, that the new rates are less than the rates charged on lumber by other railroads in the United States, are less than the rates charged by defendants on lumber generally, and less than those charged by the defendants on any other commodity; fourth, that the 40-cent rate established in 1893 was made under special and peculiar circumstances which have so changed as to require and warrant the advance. It may be added in this connection that up to 1904 spruce lumber carried the same rate as cedar lumber, but at that time it was reduced to the fir-lumber rate.

The Supreme Court of the United States has said in Interstate Commerce Commission v. Chicago Great Western Ry. Co., 209 U. S., 108, that an increase of rates by a carrier raises no presumption of wrong. It seems, however, that when certain rates have been in force

for a long period of time and business conditions have become well settled thereon and the carrier is earning a liberal income and paying liberal dividends while expending large sums in improvements and renewals, a material increase in those rates unaccompanied by a corresponding decrease in other rates places upon the carrier the obligation of justifying the increase.

Under this presumption complainants contend that the old rates were reasonable and remunerative; that under them many mills have been built and large amounts of money have been invested which under the new rates will be lost because the mills can not find an outlet for their product in the territory affected by the advance
96 in the rates; that the consumers in the affected territory are likewise interested; that the carriers should grant rates that will permit the widest possible competition in commodities; that the carriers' total incomes from their entire schedules of rates are sufficiently remunerative and profitable, and such being the case the carriers are estopped from increasing a rate on any commodity that will increase the income; that if the total income is sufficient they are not permitted to increase the rate on a given commodity that may be lower than the cost of transportation. To this last proposition we, of course, can not assent.

While denying an intent to claim that a rate on a commodity may be based upon the profitable nature of an industry producing it, yet defendants indirectly advance that theory. They also insist that every commodity should bear its just burden of rates and that lumber did not bear its just proportion, and that therefore the rates thereon should have been increased. If this is true, some other commodity is bearing too high a rate, but defendants have not suggested which one. They also insist that the changed conditions since the low rates were inaugurated required the advance. Neither of the parties are right in all their contentions.

The railroad rates from various points of production will determine so far as transportation is concerned the limit or the extent of the consuming territory which any given commodity can reach. In competition with others and in their desire for business, carriers may move a commodity as far as a remunerative rate will permit—that is, if the compensation is something above the actual cost of the service, and it may be doubted whether carriers can go to this extent if the equipment so used is thereby diverted from the demands of other traffic offered to the carrier. Points producing the same commodity may be widely separated and be served by different carriers. It is manifest that the rates of the different carriers serving the different points will likewise determine the limits of the common competitive territory of the commodities from such points of production. Competitive rates made by the several carriers serving the different points of production may be lower than they could be compelled to make. The law permits the making of a competitive rate to the extent above

mentioned, but there is no law that requires the carriers to go to that extent. This controversy can not be determined wholly upon the ground that complainants have enjoyed the lower rate for many years and that interests have been built up thereunder, and that loss of business, investments, profits, and markets will result under the increased rates. It must be determined on the justness or reasonableness of the rates in controversy. Neither do the interests of the public require that lumber should be transported at other than just and reasonable rates.

97 Defendants can not justify the advance on the theory that the increase in the rates will be absorbed by the decrease in the cost of the raw material. From the record it appears that the price of this lumber in the common competitive territory is largely controlled by the price of yellow pine, and that only for the past few years has fir lumber been considered in competition with yellow pine. All lumber is sold f. o. b. the mills; the freight to the point of destination is added as a part of the invoice price which is paid by consignee and deducted from said invoice price. The same is true as to shipments from the yellow-pine country and the margin of difference in the two rates gives the yellow-pine producer a considerable margin of profit over the Pacific coast manufacturer. It seems quite clear that the price of lumber prior to this advance in rates had reached a point where further increase in the price would have brought about the use of substitutes therefor in all instances where substitutes could be used. On the price prevailing prior to July, 1907, it is clear that the Pacific coast lumber dealers could not have absorbed in their selling price this increase in rate, nor could they have added it thereto and competed successfully with yellow pine. It is undoubtedly true that this advance in the rate must be absorbed some place, and if the logs are to be deemed the raw material, as an economic principle the raw material would have to absorb this increased rate if disposition is to be made of such raw material. This theory assumes that the logs are cut. The advance in the rate would not reduce the price of timber land or stumpage, and up to the time of the hearing had in no way affected them. Whether the advance in the rates be absorbed in the price of the raw material or whether it comes out of the manufactured product it is apparent that some one's profits are reduced under this advance in the rates, and whether the loggers have been making an unusual profit, or the mill men owning their own logs have made an abnormal profit thereon, or the mills have made large profits on the manufactured product, the advanced rate can not be justified on these propositions. It must be justified on the ground that it is just and reasonable, regardless of the prosperous condition of the industry affected, or where it will be absorbed. So that we have these propositions: If the old rates were too low to be just and reasonable, complainants can not urge their loss as a ground for maintaining them; if the old rates were just and reasonable, the defendants can not justify the advance on the ground of the prosperity

of the lumber business, or that the loggers will absorb the increase in the decreased price of raw material.

The defendants urge with great vigor that the empty east-bound car movement prevailing at the time of the establishment of the 40-cent rate was the principal factor influencing the establishment of that rate and as the empty-car movement is now westbound, a
98 condition has arisen which was not contemplated at the time of the establishment of the 40-cent rate. An examination of the records of the various defendants shows that the empty-car movement is now west bound. Taking the statements of the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, Union Pacific Railway Company, Northern Pacific Company, and Great Northern Railway Company for the years 1905, 1906, and 1907, it appears that on the line first mentioned the loads east and west were practically the same, but that the west-bound empty-car movement was practically 15 per cent greater than the eastern empty-car movement. On the Oregon Short Line the loads west exceeded the loads east and the west bound empty-car mileage was materially less than the empty-car mileage east. On the Union Pacific for the years 1905 and 1906 the loads east were greatly in excess of the loads west, but in 1907 the west-bound tonnage was heavier than the east-bound, and the west-bound empty-car mileage exceeded the east-bound empty-car mileage in about the same proportion as the west-bound loaded mileage exceeded the east-bound loaded mileage. What became of this excess of cars west for this year does not appear. The Great Northern and the Northern Pacific for the period mentioned showed an east-bound tonnage greatly in excess of that west-bound, and their west-bound empty-car mileage exceeds the east-bound in practically the same proportion except for the year 1907, and in that instance the percentage of west-bound empty-car movement over eastern was greatly in excess of the percentage of east-bound loads over west-bound loads. This discrepancy is not explained.

The following table shows the percentages of the several defendants' total tonnage, which products of mines and of forests contributed for the year ended June 30, 1907:

Carrier.	Mines.	Forest.
	Per cent.	Per cent.
Oregon Railroad & Navigation Co	28.61	30.25
Oregon Short Line	52.11	14.43
Union Pacific Co	31.95	7.86
Northern Pacific Co	21.05	37.38
Great Northern Co	51.75	14.80

From this table it appears that the Great Northern and Oregon Short Line are the heavy ore-carrying roads, and that the Navigation Company and the Northern Pacific are the heavier lumber-carrying

roads. For the year 1907 the percentages of empty-car movement of the lines named below was to their total movements as follows:

	Per cent.
Great Northern	24.05
Northern Pacific	21.08
Union Pacific	24.88
Oregon Short Line	29.59
Oregon Railroad & Navigation Company	18.76

99 The percentage of lumber to other tonnage carried by the Oregon Railroad & Navigation Company for 1907 was more than the percentage of lumber carried by the Short Line and the Union Pacific, yet each of these roads had a greater percentage of empty-car movement, while the Northern Pacific, the heaviest lumber-carrying road of all, had a lower percentage of empty-car movement. The Short Line, the Great Northern, and the Union Pacific were the heaviest ore-carrying roads, and their percentages of west-bound empty-car movement are the highest. The defendants contend that the predominating west-bound car movement is due solely to lumber, while complainants contend that it is not, and while there can be no doubt but what the 40-cent rate was made at a time when the empty-car movement was east bound, yet it would seem from the records that the predominating west-bound car movement can not be charged wholly to the increased east-bound movement of lumber and forest products. It will be observed that in the tables offered by the defendants west-bound empty-car movement is shown on the Great Northern, the heaviest ore-carrying road, while the east-bound empty movement is shown on the Northern Pacific, the heaviest lumber-carrying road. If, as we understand to be the case, the Great Northern figures include their ore business from the Missabe Range the figures are of no value or importance in this case, because the cars used in that trade do not go into the lumber territory in question, and neither the Missabe Range ore traffic or the North Pacific coast lumber traffic has any effect upon the other or upon the equipment used therein.

A comparison of the old rates on the Union Pacific system with the new rates on the Great Northern and Northern Pacific shows that for similar distances and destinations the new rates on the Northern lines are the same or less than the old rates on the Union Pacific system. And the president of the Northern Pacific says that the new rates will permit them to handle empties west bound for lumber without loss.

The principal points of origin involved in this complaint are those within the State of Oregon and those at adjacent points on the Columbia River in the State of Washington. From Goble to Astoria the Astoria and Columbia River furnishes the rail outlet from points on both sides of the Columbia River. The Northern Pacific does not extend south of Portland, and the 40-cent rate from Portland and from points on the Astoria and Columbia River Railroad to St. Paul applied only via the lines of the Northern Pacific and the Great

Northern. The Southern Pacific and the Oregon Railroad and Navigation Company never established that rate from points on their respective lines in Oregon. The only rate shown from Portland or intermediate points via the Navigation Company in connection
100 with the Northern Pacific is via Wallula Junction, and that only to destinations in Idaho and Montana. Therefore it seems clear that the Northern Pacific is dependent upon Portland and points on the Astoria and Columbia River Railroad for its lumber tonnage from Oregon. There are fifteen lumber mills at Portland, and all have rail and water outlets, and from the statements of the shipments made by the various mills it appears that nearly all, if not all, of the Portland mills make heavy ocean shipments, both coastwise and foreign. This is also true of the 32 mills on the line of the Astoria and Columbia River Railroad, between Portland and Astoria. All of these mills dispose of much of their output in Oregon and Washington. Their common lumber and lower grade products do not reach markets east of North Dakota, so that the lumber tonnage of the Great Northern and the Northern Pacific from points in Oregon destined to St. Paul and points East must consist largely of the higher grade products. And taking into consideration the coastwise and ocean shipments, the local disposition in Washington and Oregon, and the large percentage of common lumber and lower-grade products, the traffic in lumber from this limited territory to St. Paul via the Northern Pacific and Great Northern must be small as compared with the total output from this territory, or with the lumber traffic they move from either Seattle or Tacoma. For these reasons Portland is not a fairly representative point as to volume of lumber tonnage moving to St. Paul under the 40-cent rate, but it is fairly representative as a point in Oregon that enjoyed that rate. With these facts in view, the rate per ton per mile under the 40-cent rate to St. Paul, shown herein by way of illustration, was determined upon the distance from Portland to St. Paul. The 40-cent rate also applied from Astoria to St. Paul, where the distance is 2,074 miles, and the rate per ton per mile there would, of course, be still less. The Northern Pacific haul will be materially shortened and heavy grades will be avoided by the completion of its new line on the north bank of the Columbia River, over which line the lumber hauled by it from Oregon and southern Washington will naturally move.

Seattle takes the same rate as Portland, and Minneapolis takes the same rate as St. Paul, and when the rate per ton per mile is based upon the mileage Seattle to Minneapolis, the result is not the same as that obtained when Portland mileage is taken. Minneapolis is 10 miles nearer the coast than St. Paul, and Seattle is 186 miles nearer Minneapolis than Portland. The rate per ton per mile from points of production grouped together under one rate to points of consumption likewise grouped together under that rate is not properly determined by using the mileage between these points that are nearest to each other.

The group system of rate making is well recognized in constructing rates upon such commodities as lumber and coal, and it obtains in the yellow-pine district as well. It is also a well-established
101 principle to make transcontinental rates apply alike to large areas over which such rates "blanket." It would seem unwise to attempt to give Seattle and Tacoma a better rate than Portland or other points in the North Pacific territory.

It will be noticed that the old rate on fir lumber from Portland to the Missouri River was 50 cents per 100 pounds, and the short-line mileage is 1,799 miles, or approximately 130 miles less than the short-line mileage from Seattle to St. Paul, and it is urged that the rate from Portland to Omaha should not exceed the rate from Portland to St. Paul. However, this 50-cent rate to the Missouri River, and also extending to Chicago, applied not only from Portland but from points on the Southern Pacific lines south of Portland as far as Medford, 359 miles, and while it may be that lumber produced that far south of Portland would naturally move southward, at the same time the rate was open from Medford. The record shows that at least as far as Cottage Grove, 150 miles from Portland, lumber moves via the Southern Pacific into Portland and east over the lines of the Navigation Company. It is apparent that the greater part of the traffic covered by this complaint moves via the lines of the Southern Pacific, Oregon Railroad & Navigation Company, Oregon Short Line, and Union Pacific and its connections.

We are of the opinion that upon the entire record in this case the rates on lumber, shingles, and other forest products which were in effect immediately prior to November 1, 1907, from points in Oregon, Washington, Idaho, Montana, and British Columbia to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding points to which rates are prescribed by the commission in cases Nos. 1054 and 1331, and observing the differentials prescribed by the commission in case No. 1348, were and are just and reasonable, and should be restored.

The rates from said points of origin to points east of the line above mentioned, excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., which were in effect on October 31, 1907, might reasonably be somewhat increased. Such increase should not, however, in any case exceed the rates in effect immediately prior to November 1, 1907, by more than 5 cents per 100 pounds, under the present minimum weight regulations and must be in conformity with the differentials prescribed by the commission in case No. 1348. The rates to points in Minnesota east of the line mentioned should be graded up from that line so as to reach the maximum increase

102 at Minneapolis, St. Paul, Minnesota Transfer, and Duluth. The rates from the Missouri River crossings should be graded up and the maximum increase of 5 cents be reached at the Mississippi River. Chicago rates should apply to all points between the Mississippi River crossings, East Dubuque to East St. Louis, inclusive, and Chicago. The rates to St. Louis, and points taking the same rates, should not exceed the rates to Chicago. This adjustment preserves the differential fixed by the carriers under the advanced rates between the Missouri River and Chicago, and also maintains the parity fixed by defendants between St. Louis and Chicago.

While permitting some rates to be increased this adjustment also reduces some rates below what they were immediately prior to the increase complained of. We think that complainants are entitled to reparation only upon shipments upon which charges were collected in excess of the rates between the same points which were in effect immediately prior to November 1, 1907; that in instances in which the rates herein prescribed are not lower than the rates which were in effect between the same points immediately prior to November 1, 1907, such reparation should be measured by the difference between the rates actually paid and those herein prescribed; and that in instances in which the rates herein prescribed are lower than the rates which were in effect between the same points immediately prior to November 1, 1907, such reparation should be measured by the difference between the rates actually paid and those which were in effect between the same points immediately prior to November 1, 1907.

An order will be entered in accordance with these views, and this report should be read in connection with the commission's reports and orders in cases 1329, Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Ry. Co. et al.; 1335, Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Ry. Co. et al.; 1348, Potlatch Lumber Co. et al. v. Northern Pacific Ry. Co. et al.; 1054, Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Ry. Co. et al.; and 1331, Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Co. et al., infra.

KNAPP, chairman, dissenting:

The conclusions of the majority in these cases do not seem to me to be warranted, and I am therefore constrained to dissent.

A careful examination of the record shows that the contention of complainants rests mainly, if not altogether, upon two propositions: (1) That the rates which were advanced on November 1, 1907, had been voluntarily accorded for a considerable period of years and must therefore be regarded as reasonable; (2) that the earnings of the defendant carriers upon their entire business are so great as to afford ample revenue without advancing the rates in question.

103 Undoubtedly the fact that a given rate has long been allowed is in the nature of an admission by the carrier that the resulting earnings were fairly compensatory, and when that rate is in-

creased the carrier may properly be called upon for an explanation of its action. But when that explanation has been furnished, and the reasons shown for making the advance are prima facie sufficient, any presumption against the carrier loses its force. It is clear to me that the rates in question do not belong to the class of rates originally established on a reasonable basis in the estimation of the carrier, and which therefore ought not to be advanced without convincing reason. In other words, we are not dealing in these cases with the question of a general advance in rates, which has been the subject of recent discussion, nor with the ordinary rate situation which has been voluntarily maintained for a period of years, but with an exceptional instance of rates fixed at a very low figure, lower than might have been lawfully charged, because peculiar conditions induced the carrier to make rates for the time being on a particular commodity which were below the standard of reasonableness. All the circumstances indicate to my mind that these rates when established were regarded by the carriers, and by the shippers as well, as uncommonly if not abnormally low, and that both parties apparently anticipated that at a later date they would be advanced.

I can not but believe that conditions have so changed since these rates were established as to justify the carriers in refusing to continue them in force. Without detailing the history of these rates or the remarkable development of lumber traffic which followed their allowance, it appears to be undisputed that marked changes have taken place in recent years, and those changes furnish adequate reason, in my judgment, for higher charges than were formerly applied. During this period the market value of commercial lumber has materially advanced, and the cost of railway operations has greatly increased. I think it is clearly shown that lumber values have advanced nearly 50 per cent, certainly not less than 40 per cent, and everything indicates that this advance will be permanent. While prices will more or less fluctuate, and may not at this time be quite as high as they were a year ago, nevertheless I am convinced that lumber as a commodity will generally command prices in the future averaging at least 40 per cent above the prices which prevailed during most of the period when the lower rates were in force. I do not take into account the fact that the business of the Pacific coast lumbermen has been exceedingly profitable, nor the fact that a reduction in rates will inure largely, if not mainly, as I think, to those who own the uncut timber lands, but I do regard the very substantial and probably permanent increase in the selling price of lumber as a pertinent and important consideration. That the cost of railroad operation has greatly
104 increased within the last few years is a matter of common knowledge, and it is unnecessary to more than allude to a fact with which every well-informed person is familiar. I am, therefore, of the opinion that these conceded and significant changes in conditions warranted the defendants in increasing rates which were understood to be on a very low scale when lumber was worth little more

than two-thirds its present value and when railway service was much more cheaply performed.

The other ground of complainants' contention seems to me even less tenable. It is undoubtedly true that for a period of several years, and particularly during the fiscal years 1906 and 1907, the earnings of these defendants from their entire business were large. After defraying all the expenses of operation and maintenance, the payment of fixed charges and comparatively liberal dividends, a substantial surplus remained. But it appears to me entirely clear that no considerable part, if any, of this surplus resulted from the transportation of lumber to the territory affected by the advance in rates. This statement seems to be fully confirmed by the fact that the ton-mile rates on this lumber were very much less than the average ton-mile rates upon all the traffic of the defendant lines, including this lumber traffic. I can not concede that the unreasonableness of these advanced rates on lumber may be inferred from the showing that aggregate earnings from all traffic could be reduced without apparent injustice to these carriers, when the earnings on lumber under the old rates were extremely moderate and even under the advanced rates are comparatively small. The rates in question are not shown to be excessive, in my judgment, by the fact that these roads have been prosperous for the last few years, any more than they would be shown to be reasonable if their entire earnings had been insufficient to maintain their solvency.

Taking into account all the transportation conditions, including the haul over two mountain ranges and through a long stretch of territory which furnishes little traffic, I am of the opinion that even the advanced rates are among the lowest on which any considerable volume of lumber is anywhere moved. They are the lowest rates, all things considered, which the defendants charge on that commodity, and relatively low in comparison with their rates on other traffic. The old rates may fairly be regarded as unreasonably low, even if they did not discriminate against other traffic, and I think the defendants were justified in applying a higher scale of charges. Out of deference to the judgment of my associates, with whom I hesitate to differ on a question of this kind, I would be content to fix these rates on a basis somewhat lower than the advances actually made, but I can not agree that the basis named in the majority report must be regarded as the maximum of reasonableness.

I am authorized to say that Commissioner Harlan unites in this dissent.

(Endorsed:) Filed December 16th, 1908. Henry D. Lang, clerk.

104a Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Præcipe for order setting down demurrer for hearing.

To the clerk of the above-named court:

Please enter order setting down demurrer of defendant for hearing at next rule day.

JAMES B. KERR,
HALE HOLDEN,
F. C. DILLARD,
W. W. COTTON,
Solicitors for Complainants.

(Endorsed:) Præcipe for order setting demurrer down for February rules. Order entered T. M., vol. 39, page 91. Filed January 4th, 1909. Henry D. Lang, clerk.

104b United States Circuit Court for the District of Minnesota, Third Division.

Term minutes. June term, A. D. 1908. January 4th, 1908.

Monday morning: Court opened pursuant to adjournment. Present: Hon. Milton D. Purdy, judge; Henry D. Lang, clerk.

UNION PACIFIC RAILROAD COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
Equity. No. 883.

Pursuant to a præcipe this day filed herein, signed by the solicitors for the complainants, it is by the court ordered that the demurrer of defendant be and the same hereby is set down for hearing at the next rule day, to wit, February 1st, A. D. 1909, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

104c DECEMBER 4, 1909.

UNION PACIFIC R. R. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 883.

NORTHERN PACIFIC RY. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 884.

GREAT NORTHERN RY. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 885.

Stipulation.

In addition to the stipulation entered into at St. Paul concerning the printing of the record in the cases before the Interstate Commerce Commission, the following supplementary agreement, subject to the objections heretofore made as to the admissibility of testimony, is hereby entered into between counsel for the respective parties, as follows, to wit:

1. The printed abstract of the oral testimony fairly presents the substance of all that character of testimony offered before the Interstate Commerce Commission on the hearing before it of these cases, and the printed abstract fairly presents the selected exhibits or the substance thereof presented to said commission on said hearing.

2. The other exhibits presented on the hearing aforesaid or reports and documents on file with the commission or referred to on the hearing before said commission in said cases may be considered by the master and used by either party hereto on the hearing before him without the printing thereof.

3. Either of the parties hereto may print and file with the master or the court such portions thereof as counsel may deem material, but if the same be not printed for the hearing before the master no rights to use the same as evidence or rights to print the same for the use of the court thereafter are waived.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.

LUTHER M. WALTER,
JOSEPH N. TEAL,
WILLIAM A. WIMBISH,
Solicitors for Defendant.

(Endorsed:) Stipulation as to record for submission to master, &c. Filed Jan. 5, 1910. Henry D. Lang, clerk.

105 Thereafter and on January 4th, 1909, the following replication was filed in said cause, to wit:

106 In the Circuit Court of the United States for the District of Minnesota, Third Division.

Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and California and Oregon Railroad Company, complainants. *vs.* The Interstate Commerce Commission, defendant.	In equity. No. 883.

Replication.

These repliants saving and reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant for replication thereunto saith that they do and will aver, maintain, and prove their said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained, material, or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct and humbly prays as in and by their said bill they hath already prayed.

James B. Kerr,
Hale Holden,
W. W. Cotton,
F. C. Dillard,
Solicitors for Complainants.

(Endorsed:) Replication. Filed January 4th, 1909. Henry D. Lang, clerk.

107 Thereafter and on the 11th of January, 1909, the following instructions of the court in relation to hearing upon demurrer was filed in said cause, to wit:

108 ST. LOUIS, MISSOURI, *January 9, 1909.*

Hon. HENRY D. LANG,
Clerk, U. S. Circuit Court, St. Paul, Minnesota.

DEAR SIR: Regarding the three cases, No. 883, 884, and 885, the railroad cases against the Interstate Commerce Commission pending in St. Paul in which demurrers have been interposed, you may notify the lawyers that the circuit judges will be in St. Louis until the the first of April, that during April they will be separated and that they will be in St. Paul during the session of the Court of Appeals in May. The cases may be heard at St. Paul at some convenient time after May 1st, or they may be heard at St. Louis at some convenient time prior to April 1st, if they desire to urge their hearing at so early a date. Personally I should prefer to have them heard at St. Paul, but the judges will accommodate the lawyers as to the time of hearing. Before fixing upon the time, however, we should like notice of the time desired because some of the judges are liable to be out of the city here unless we agree upon the time.

Yours, truly,

WALTER H. SANBORN,
U. S. Circuit Judge.

(Endorsed:) Instructions of court in relation to hearing upon demurrer. January 11th, 1909. Henry D. Lang, clerk. By Louis B. Trott, deputy.

Thereafter and on February 15th, 1909, the following order appointing Frederick N. Dickson special master in chancery was filed and entered in said cause, viz:

109 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILWAY COMPANY ET AL.,
complainants,
vs.
INTERSTATE COMMERCE COMMISSION.

Come now the parties, the complainants, by F. C. Dillard, Esq., and the defendant, by Luther M. Walter, Esq., and after due consideration,

It is hereby ordered that Frederick N. Dickson, Esq., of St. Paul, Minnesota, be, and he is hereby, appointed special master in chancery in this case.

The special master hereby appointed is empowered and directed to take and report to the court the evidence in this cause; to examine the same; to make the necessary computations; to find and state the

facts in this case; and to report advisory conclusions of law, and recommend a proper form of decree herein.

It is further ordered that upon the completion of his report the special master shall notify counsel for the respective parties thereof and shall exhibit said report to them or deliver to them copies thereof; that each of the parties to this suit may thereupon file exceptions to the report with the master within thirty days after its exhibition or delivery to their counsel; and the master shall thereupon consider and sustain or overrule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings thereon, the evidence, and any modifications of or additions to his report he may deem it just and proper to make in view of the exceptions.

Upon the filing of such report and exceptions this cause shall stand for hearing before the court upon said exceptions as though
110 they had been made at the time specified in rule 83 in equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainants shall take their evidence is fixed and limited to sixty days from the date hereof; that the time within which the defendant shall take their evidence in defense is fixed and limited to forty-five days thereafter; and the time within which the complainants shall take their evidence in rebuttal is fixed and limited to thirty days thereafter.

February 13, A. D. 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order appointing F. N. Dickson, special master. Entered term minutes, volume 29, page 159. Filed February 15th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

And thereafter and on the 16th day of February, 1909, the following oath of Frederick N. Dickson was filed and entered in said cause, to wit:

111 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883. Equity.

I, Frederick N. Dickson, do solemnly swear that I will support the Constitution of the United States, and faithfully, impartially, and to

the best of my ability perform my duties as special master in chancery in the above-entitled cause. So help me God.

FREDERICK N. DICKSON.

Subscribed and sworn to before me this 16th day of February, A. D. 1909.

[SEAL OF COURT.] LOUISE B. TROTT,
Deputy Clerk, U. S. Circuit Court for the District of Minnesota.

(Endorsed:) Oath of Frederick N. Dickson, special master. Entered miscellaneous records, vol. 1, page 180. Filed February 16th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on the same day the following stipulation postponing demurrer was filed in said cause, to wit:

112 In the Circuit Court for the United States for the District of Minnesota.

UNION PACIFIC R. R. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 883.

In this cause it is stipulated and agreed that the demurrers may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier day.

HALE HOLDEN,
F. C. DILLARD,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

February 3rd, 1908.

(Endorsed:) Stipulation postponing demurrer. Filed February 16th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

And thereafter on the same day the following order postponing hearing on demurrer was entered in said cause, to wit:

113 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, defendant.

In accordance with a stipulation to that effect signed by the solicitors for the respective parties and filed herein, it is by the court

ordered that the demurrer may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier date.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order postponing hearing on demurrer. Entered T. M., vol. 39, page 164. Filed February 16th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on March 15, 1909, the following order appointing Robert S. Taylor stenographer was filed and entered in said cause, to wit:

114 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION.

It is hereby ordered, That Robert S. Taylor be, and he is hereby, appointed stenographer, empowered and directed to take and report, under the direction and orders of Honorable Frederick N. Dickson, the special master herein, the evidence that may be offered in the case above entitled.

WALTER H. SANBORN,
Circuit Judge.

ST. LOUIS, MO., *March 15, 1909.*

(Endorsed:) Order appointing Robert S. Taylor stenographer. Entered T. M., vol. 39, page 202. Filed March 15th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on April 15th, 1909, the following stipulation extending complainants' time to take testimony was filed in said cause, to wit:

115 Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants,
vs.
THE INTERSTATE COMMERCE COMMISSION, defendant.
In equity. No. 884.

Stipulation.

It is hereby stipulated and agreed by counsel for the respective parties that the time for taking complainants' evidence may be ex-

tended until May 15, 1909, and that on or before that day or immediately thereafter the time may by order of court be fixed for the taking of evidence in behalf of the defendant, as well as time thereafter, if desired, for taking evidence by complainants in rebuttal.

Dated this 15th day of April, 1909.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN.
Solicitors for Complainants.

LUTHER M. WALTER,
Solicitor for defendant.

(Endorsed:) Stipulation extending complainants' time to take testimony to May 15, 1909. Filed April 15, 1909. Henry D. Lang, clerk.

And thereafter on the 23rd of April, 1909, the following order extending time to take complainants' testimony was filed and entered in said cause, to wit:

116 Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 883.

Order.

Upon reading the stipulation filed in this cause this day, duly signed by counsel for the parties hereto, it is

Ordered, That the time heretofore granted to complainants for taking testimony in this cause be extended until May 15, 1909; that defendant may on or before said date or immediately thereafter apply to the court by stipulation or otherwise, for the fixing of a date for the taking of its testimony herein, at which time an order will be entered for that purpose, and also setting a time for taking by complainants of testimony in rebuttal after the completion of defendant's testimony so to be provided for.

In other respects the order heretofore made touching the taking of testimony and the report of the master appointed herein shall remain as provided for in the original order.

Dated April 15, 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order extending time to take complainants' testimony. Entered T. M., vol. 39, page 259. Filed April 23rd, 1909. Henry D. Lang, clerk.

117 Thereafter and on March 11th, 1910, the following stipulation to tax costs was filed and entered in said cause, to wit:

118 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} In equity. No. 883.

Stipulation to tax costs.

It is agreed that the clerk shall tax in this cause the sum of $2.50 per day for eight days in favor of H. Lee, court crier, as compensation to him for attendance at the argument of this cause before special master, in the city of Chicago, February 8th to 16th, inclusive. These costs to be adjudged against the losing party in this cause in the final event of the action.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Attorneys for Complainants.
LUTHER M. WALTER,
J. N. TEAL,
W. A. WIMBISH,
Attorneys for Defendant.

Dated at Chicago, Illinois, March 8th, 1910.

(Endorsed:) Stipulation to tax costs of H. Lee, court crier. Filed Mar. 11, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on the 30th day of July, 1910, the following stipulation to modify order was filed and entered in said cause, to wit:

119 In the Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD CO. ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, defendant.
} In equity. No. 883.

Stipulation.

It is hereby stipulated and agreed that the order entered herein on February 15, 1909, shall be modified, and that either party hereto shall file its exceptions to the master's report on or before August 19, 1910, and that an order may be entered herein setting down said exceptions for hearing before the master, in the city of St. Paul, in

August 19, 1910; that said order may provide that the master shall pass upon said exceptions and file his report, said exceptions, a report of his action thereon, and all other matters contemplated by the order of February 15, 1909, in the clerk's office, on or before August 27, 1910; that said order shall provide that either party hereto shall file such additional exceptions as may be desired in the clerk's office on or before September 10, 1910, and that this cause be set down for hearing before the circuit judges at the city of St. Paul on September 15, 1910.

HALE HOLDEN,
Solicitor for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

Dated this 27th day of July, 1910.

(Endorsed:) Stipulation to modify order. Filed July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on the same day the following order was filed and entered of record in said cause, to wit:

120 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.
} In equity. No. 883.

Order.

Upon reading the stipulation dated July 27, 1910, of the parties hereto, duly filed herein, and upon due consideration thereof:

It is ordered, That the order heretofore entered on February 15, 1909, appointing Honorable Frederick N. Dickson as special master, and defining his duties touching the making of a report, hearing exceptions thereon, and filing his said report, exceptions, and rulings thereon in the office of the clerk in this court, be, and the same is hereby, modified; and it appearing that the special master did, on July 22, 1910, deliver a copy of his report to each of the parties hereto, in lieu of the provisions of said order;

It is ordered, That either party hereto shall file its exceptions, if any, to the master's report with him on or before August 19, 1910, and that on that day, at the city of St. Paul, the special master shall hear arguments upon any exceptions so filed and presented to him to his report; that on August 27, 1910, the special master shall file with the clerk of this court his report, any exceptions thereto filed with him as aforesaid, a statement of his action and rulings thereon, together with a form of decree recommended by him to be entered in this cause.

It is further, in accordance with the stipulation as aforesaid, that either party hereto shall file with the clerk in this court,
121 on or before September 10, 1910, such further exceptions as may be taken, and that this cause be, and the same is hereby, set down for hearing before the circuit judges of this circuit, in the United States court room, at the city of St. Paul, Minnesota, on September 15, 1910, upon the master's report and the exceptions thereto, including those exceptions filed with him as aforesaid, and such additional exceptions as may be filed in the clerk's office, as provided for in this order.

WILLIS VAN DEVANTER,
United States Circuit Judge.

Dated this 30th day of July, 1910.

(Endorsed:) Order. Entered T. M., vol. 42, page 118 and 119. Filed, July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on August 27th, 1910, the following Transcript of Record, in four volumes, was filed in said cause, to wit:

(These four volumes, paged consecutively from 1 to 1623, inclusive, are printed separately, with a separate index in each volume, and marked volumes 1, 2, 3, and 4.)

1777 And thereafter and on the same day the following master's report was filed in said cause, to wit:

1778 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILROAD COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.
No. 885.

Master's report.

These three suits were begun by the carriers parties complainant hereto to enjoin the enforcement of certain orders of
1779 the Interstate Commerce Commission prescribing maximum rates for the future transportation of lumber in carload lots from points on the Pacific Coast to points in various States and Territories east and southeast of the points of origin. In the case of No. 883, called the Union Pacific case, an injunction is sought against an order made by the commission in its docket No. 1327, upon a complaint brought by the Oregon and Washington Lumber Manufacturers' Association and others against the Union Pacific Railroad Company and others. The complaint alleged that an advance in the rates on lumber and other forest products established by the defendants and other participating carriers from points in Oregon, Washington, Idaho, Montana, and British Columbia to points in other States therein set forth were unreasonable. The rates prescribed by the commission were the same as those in effect immediately prior to November 1, 1907, except that the rates to all points on and east of a line drawn from Pembina, North Dakota, south to Port Arthur, Texas, subject to minor exceptions, might be increased not to exceed 5 cents per one hundred pounds.

In the case of No. 884, called the Northern Pacific case, the bill attacks an order of the commission made in its docket No. 1329 and No. 1335, upon complaints filed by the Pacific Coast Lumber Manufacturers' Association and the Southwest Washington Lumber Manufacturers' Association, respectively. Those complaints attack the reasonableness of defendant's rates substantially as complained of in the Union Pacific case, docket No. 1327.

In the case of No. 885, called the Great Northern case, the bill attacks an order prescribing rates for the future on lumber and forest products made in its docket No. 1348, upon complaint of the Potlatch Lumber Company and others. The rates attacked
1780 had been advanced on November 1, 1907, and applied from points of origin in the States of Washington, Oregon, and Idaho east of the Cascade Mountains, commonly known as interior points. The points of destination were in States south and east of the States in which were the points of origin. In this case the commission established rates to the various points of destination referred to in numbers 1327, 1329, and 1335 lower than the coast rates group by

differentials beginning at not less than 2 cents per one hundred pounds and graded up to not less than 6 cents per one hundred pounds from the group west of Spokane. From the Spokane group the differentials graded from 3 cents to 7 cents per one hundred pounds.

All these orders were effective August 15, 1908, but were later extended by order of the commission so as to become effective October 15, 1908. The rates so prescribed by the commission are now and have been continuously in effect since said latter date and they expire by limitation of the statute on October 15, 1910.

These three cases were all referred to the master to hear and report findings of facts and recommendations for a decree and were tried together.

It is conceded that all technical requirements of the statute necessary to properly bring the matter before the Interstate Commerce Commission and to confer on the commission authority to determine and prescribe rates have been complied with. The bills allege in substance that in making the various orders the commission acted without warrant of law in that the act to regulate commerce as amended by the so-called Hepburn bill of June 29, 1906, is unconstitutional and void because it confers upon the commission executive, legislative, and judicial powers; and for the further reasons that the rates prescribed by the carriers and which the commission reduced were low, just, and reasonable and that the rates prescribed
1781 by the commission in lieu thereof were and will be for more than three years from the date of the filing of the bills unjust and inadequate compensation for the service rendered; that the making of the orders complained of was pro tanto depriving the complainants of their property without due process of law in violation of the 5th and 14th amendments of the Federal Constitution; that sections 15 and 16 of the act to regulate commerce insofar as they make the orders of the commission effective of their own force prior to a hearing in a court of justice upon the question of the reasonableness of the rates prescribed in said orders, are void as being in conflict with the Federal Constitution, which provides that all judicial power is vested in the courts of the United States; that section 16 of the act to regulate commerce is void for the additional reason that it prescribes that the carrier failing to comply with an order of the commission shall forfeit to the United States the sum of $5,000.00 for each day said carrier fails to obey said order, notwithstanding that the question of the unreasonableness of the rates has not been judicially investigated in any court of law and that it deprives complainants of their property without due process of law contrary to article five of the amendments to the Constitution of the United States.

The bills further allege that upon the hearings of the case before the commission no evidence was considered or offered which in any wise showed, or tended to show, that the rates complained of were excessive, unjust, or unreasonable, and that the commission entered the orders complained of without any justification in fact therefor

and without any evidence or finding of fact that said rates fixed by the defendants before the commission were excessive, unjust, and unreasonable; that the circumstances and conditions surrounding
1782 the transportation of lumber existing on November 1, 1907, were wholly different from those existing at the time when the rates in effect prior to said date were made; that the commission held as a matter of law that the continuance of such rates raised a presumption that the higher rates were unjust and unreasonable; that in such holding the commission acted erroneously, through a mistake and misapprehension of the law and without authority; that the rates so fixed by the commission are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and bear no just or fair relation to the rates on through traffic moving over the complainants' lines, and that the rates prescribed by the commission will impose an undue and unreasonable burden, not only upon the complainants, but upon the shippers of other commodities.

The complaints further alleged "that the rates so fixed by said order are unreasonable and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the States of Washington, Oregon, Montana, and Idaho to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order, and your orators upon information and belief aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on through traffic moving over your orators lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden, not only upon your orators, but upon the shippers of other commodities."

1783 This is the only allegation of confiscation contained in the bills.

To these bills the commission filed a demurrer and answer, the demurrer applying to those allegations of the bill which set forth that certain portions of the act to regulate commerce are unconstitutional, and by stipulation the questions raised by these demurrers are reserved for the court's decision, and with those questions the master has nothing to do.

In its answer the commission denies that the rates in effect and complained of before the commission were either unreasonable or unjust and will so continue to be. The answer sets forth the position of the commission with reference to the extent of the review which the court should exercise over the action of the commission, namely that the court should not make any inquiry with reference to whether

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the rates prescribed by the commission are just and reasonable, except within the constitutional guaranty in the fifth amendment which prohibits the taking of private property without just compensation and due process of law. The answer alleges that the rates prescribed by the commission will afford just compensation for the service rendered and that the orders were made in due process of law. It is further alleged that the court should not hear and determine these cases upon any state of facts which were within the knowledge of the complainants and which they failed or neglected to present to the commission at the time of the hearings, nor upon any facts which may have arisen since said hearings, except such facts be first presented by an application for rehearing or otherwise to the commission. It is further alleged that the mere allegation that the rates of transportation prescribed by the defendant will not afford a fair compensation or will entail a loss or will be unremunerative ought
1784 not to be considered because such allegations are statements of conclusions or opinions of interested parties and do not have coupled therewith any statements of facts from which the reasonableness of a rate can be determined. It is further alleged that the commission is vested with the exclusive power of determining what are just and reasonable rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry leading to an independent conclusion except such as may be necessary to protect the constitutional rights of complainants. The answer denies that the defendant made the orders complained of without any evidence that the rates complained of were in violation of the act to regulate commerce; and avers on the contrary that the orders were made after a full inquiry and due investigation which disclosed facts compelling the orders made by the commission.

There seems to be a sharp controversy between complainants and defendants as to the scope of the inquiry to be entertained by a Federal court in reviewing an order of the Interstate Commerce Commission which fixes and prescribes rates for the future. The complainants claim as follows: "The questions involved in all three suits are, however, practically identical, being simply the question whether the rates as advanced were unreasonable and whether the rates the commission put into effect in place of them are reasonable." It is apparent from the arguments in the briefs that the words "reasonable" and "unreasonable" are used by the complainants in the ordinary sense. The complainants argue that inasmuch as the interstate commerce act enjoins upon the commission the duty of prescribing a reasonable rate that any rate which they may prescribe which is not reasonable is unlawful and therefore without the scope of their authority and that a Federal court may fully review the action
1785 of the commission with reference to the reasonableness of a rate prescribed by them as an operating proposition above and beyond the mere question as to whether or not it violates the constitutional guaranties of just compensation.

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The defendants insist that the court has no right to investigate the rate prescribed for the future by the Interstate Commerce Commission any further than to ascertain whether or not it violates the constitutional guaranties of just compensation and due process of law. The defendants claim that the only questions properly before the court are the following: (1) If this court finds that the order was regularly made, is not fraudulent or so arbitrary as to exceed the limits of regulation, should it make any other inquiry than as to whether the rates prescribed are confiscatory? (2) Under the circumstances disclosed in this case, should this court consider the reproductive cost of complainants' property as a material fact in throwing light upon the subject matter of the inquiry? (3) Should evidence be considered by this court which has not been first presented to the Interstate Commerce Commission, there being no allegation that such additional evidence is newly discovered or could not have been presented to the commission? (4) Should any of defendant's objections to the admissibility of testimony be sustained? (5) Do the facts shown of record warrant a finding that the rates prescribed by the commission are confiscatory? (6) Are the orders of the commission in any respect unlawful?

These suits involve rates for the transportation of lumber and forest products from points on the Pacific Coast to points on and east of the Missouri and Mississippi Rivers. The facts and circumstances leading up to this litigation and out which it grows are as follows: To the west of the Cascade Mountains from the crest of
1786 the range to the Pacific Coast is a large heavily timbered district, known and dealt with in the record as the coast district, and the coast basis of rates applies to that territory. On the east side of the Cascade Mountains as far east as the city of Spokane, Washington, is another territory which is not referred to or much dwelt on in the testimony and the rates from which do not seem to be involved in these cases. Spokane is the center of another lumber-producing territory. In early years before this industry at Spokane became sufficiently developed to invade the eastern markets the old coast rates applied to Spokane and all territory west thereof, but later on when the Spokane lumber industry outgrew their merely local markets, a differential rate slightly lower than the old blanket coast rate was installed for eastern shipments, so that Spokane forms the basis of a lower differential rate on eastern shipments. Coming farther east and continuing up the slope of the Rocky Mountains we reach another district which is the basis of a still lower differential rate on eastern shipments known as the Montana-Oregon basis and typified on the Great Northern Road by Kalispell, Columbia Falls, and White Fish, on the Northern Pacific by Hamilton, St. Regis, and Missoula, Montana, and on the Union Pacific and Oregon Short Line Railroads by Boise, Idaho, and Baker City, Oregon.

As all the differential rates are of course controlled and regulated by the basic rate or the through rate east from the coast district, the discussion in these cases has been confined to the through rates.

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Prior to November 1, 1907, the following were the rates in effect from coast points to the larger destinations in the Middle West: Coast to St. Paul, 40 cents one hundred pounds; coast to Omaha, 50 cents; coast to Chicago, 50 cents; coast to Denver, 40 cents; coast to St. Louis, 52½ cents.

1787 These rates had been in effect for about 15 years and were first installed at the time the Great Northern Road completed its road to the coast. A higher rate had been in effect prior to that time but the installation of a 40-cent rate from the coast to St. Paul by the Great Northern Road compelled a reduction in rates by the other lumber-carrying roads and the foregoing rates had been in effect since the latter part of 1893, or the very early part of 1894. On the first day of November, 1907, the roads duly installed a new tariff of rates which advanced the rates on corresponding prices as follows: Coast to St. Paul, 50 cents; coast to Omaha, 55 cents; coast to Chicago, 60 cents; coast to Denver, 50 cents; coast to St. Louis, 60 cents.

Prior to November 1, 1907, the rates from the Spokane district were as follows: Spokane to St. Paul, 40 cents; Spokane to Omaha, 45 cents; Spokane to Chicago, 50 cents; Spokane to Denver, 40 cents; Spokane to St. Louis, 52½ cents. By the tariff installed November 1, 1907, these Spokane rates were advanced as follows: Spokane to St. Paul, 45 cents; Spokane to Omaha, 50 cents; Spokane to Chicago, 55 cents; Spokane to Denver, 45 cents; Spokane to St. Louis, 55 cents. Prior to November 1, 1907, rates in the third or Montana-Oregon district were as follows: To St. Paul, 40 cents; to Omaha, 40 cents; to Chicago, 50 cents; to Denver, 35 cents; to St. Louis, 49½ cents; and by the tariff installed November 1, 1907, these rates were raised as follows: To St. Paul, 43 cents; to Omaha, 43 cents; to Chicago, 53 cents; to Denver, 40 cents; to St. Louis, 52½ cents.

The conclusion of the commission was to practically restore the old rates with the exception that they permitted an advance of 5 cents per one hundred pounds on the freight destined to points east

1788 of the Mississippi River. The commission drew a line which they called the Pembina–Port Arthur line. Pembina is a station on the international boundary on the Red River of the North near the western boundary of Minnesota. They drew a line through Pembina running approximately due south following the State lines approximately until they arrived at Sioux City, Iowa, then following the Missouri River down through Omaha and Kansas City, then the line of the Kansas City Southern Road to Port Arthur, Texas, and this line is known as the Pembina–Port Arthur line. West of that line they restored the rates as they had been previous to November 1, 1907, denying the application for an advance. East of that line they permitted an advance of 5 cents per one hundred pounds.

There is no testimony in this record directly applicable to the effect upon the earnings of the complainants of this new rate established by the commission on through traffic. While it was not as much as the complainants considered reasonable, still on through traffic it was a

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distinct advance to the northern lines, but no testimony has been offered showing how this rate actually affected the earnings of the complainants.

The testimony of the complainants has been mainly directed to showing that the old rates in force for 15 years prior to November 1, 1907, were unreasonably low and did not produce their fair share of returns or remuneration to the roads. Their testimony has been largely confined to a statement of the conditions prevailing in 1893, when the old rate was first installed, and to a statement of the changed conditions prevailing in 1907, on account of which they claimed the advance in rates was justified.

The complainants admit that it is not possible for them to show the actual cost of the transportation of a carload of lumber, the
1789 actual value of that portion of their property which is devoted to the lumber traffic, what relation the net returns on lumber traffic bear to the entire body of the net returns.

They have offered testimony substantially showing that in 1893, at the time of the installation of the old rates, the lumber industry upon the co'st was in its infancy and unable to compete in the Middle West with the white pine of northern Michigan, Wisconsin, and Minnesota. It is demonstrated that in 1893 the white pine of northern Michigan, Wisconsin, and Minnesota controlled the entire northern Middle West market as far south as St. Louis. This was on account of the cheap rates of water transportation afforded by the Great Lakes and the Mississippi River. In 1893 the railroads had a large east-bound empty-car movement. There were no products on the coast sufficient to load for the eastern markets the cars required to carry to the coast all west-bound traffic.

For the purpose of providing loads for the east-bound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul.

In 1893 the prices of labor and materials and all things which went into the equipment of railroads in the handling of traffic, as well as the price of lumber, were very low.

In the period intervening between that time and November 1, 1907, the situation has been reversed. The white pine of northern Michigan, Wisconsin, and Minnesota has practically disappeared from the market and is no longer an important element of competition. The Oregon and Washington lumber has practically acquired the old white-pine market. The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry. Prices of labor and materials have also increased to a very large extent and the empty-car movement, which in 1893
1790 was from the west east, is now from the east west, or a west-bound empty-car movement now prevails. To what extent this is due to the large output of coast lumber has not been clearly shown. It appears to be partly due to other species of traffic, but to a large extent it is no doubt brought about by the very great increase in the shipments of lumber East.

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On the other hand, it as clearly appears that the price of stumpage, prices of labor, price of machinery, and all other elements entering into the lumber traffic have increased in proportion, as have the prices of those things which enter into the transportation increased.

It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements, and in addition thereto have accumulated large surplus funds.

Two of the complainants in this action, the Great Northern Road and the Northern Pacific Road, have offered before the master a large volume of testimony, consisting of an estimate made by their engineers and heads of departments as to what it would cost to reproduce their railroads. This estimate contemplates, in the case of the Northern Pacific, a period of 12 years for the reproduction of the road, and in the case of the Great Northern a period of 8 years. In making the estimate it is not contemplated that any net returns for traffic or business done during the period of construction shall be had. In the case of the Northern Pacific the estimate approximates $700,000,000.00, and in the case of the Great Northern, $550,000,000.00.

1791 It must be borne in mind that this cost of reproduction is not an ultimate fact to be considered in the solution of these cases, but merely a collateral fact offered to influence the court's conclusion upon the ultimate fact as to the real value of the properties.

The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial, and it would serve no useful purpose to attempt to make a finding as to what it would cost, under the circumstances and conditions indicated in the estimate, to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and, inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them, we think this evidence so remote and speculative as to be absolutely immaterial in this case.

FINDING OF FACTS.

Upon careful consideration of all the evidence in this case, I find the following ultimate facts, which, in my judgment, is a fair analysis of the evidence and illustrates the situation in reference to the rates in question.

I.

In 1889 a 40-cent rate per one hundred pounds was installed by the Union Pacific system from Portland, Oregon, to Denver, Pueblo, and other Colorado common points. In 1893 a 45-cent rate was installed

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by this system from Portland to Council Bluffs and Omaha and other Nebraska main-line points. Concurrently with this rate a rate of 50 cents was made to Chicago and 52½ cents was made to St. Louis.

In 1901 the 45-cent rate to Omaha and Council Bluffs was
1792 raised to 50 cents and extended or blanketed to include Sioux City, Kansas City, and other points west thereof. The 50-cent rate to Chicago was also maintained.

II.

In 1893 the Great Northern Road was completed to the coast, and in the latter part of that year or the early part of 1894 installed the superseded rates here in controversy, which were met by the Northern Pacific System and were as follows: To St. Paul, 40 cents per one hundred pounds; to Chicago, 50 cents; to the Mississippi River, 50 cents; to St. Louis, 52½ cents; to Denver, 40 cents; to Missouri River points, 50 cents.

The Union Pacific System never met the 40-cent rate to St. Paul by any of its Missouri River crossing rates. Its 50-cent rate to Omaha continued concurrently with the 40-cent rate to St. Paul from 1901 to November 1, 1907. But because of the 50-cent rate to Chicago from St. Paul, via the northern lines, it was obliged to blanket or extend its Omaha rate of 50 cents to Chicago.

III.

At and prior to 1893 the lumber-manufacturing industry in Washington and Oregon was in its early infancy. Except for purely local consumption the mills disposed of their products at points reached by water transportation. The volume of business continued to be inconsiderable for several years after the Great Northern Road reached the coast.

IV.

The superseded rates were made voluntarily by the carriers in 1893 avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads
1793 and more particularly and immediately for utilizing an east-bound empty-car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well-defined east-bound empty-car movement from the coast.

V.

In 1893, at the time the superseded rates were installed, the entire country was suffering from the effects of the financial panic of 1893; "hard times" prevailed and industries of all kinds were at a low ebb.

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VI.

In 1893 the lumber market of the northern Middle West from as far south as St. Louis was controlled and dominated by the white pine of Michigan, Wisconsin, and Minnesota, and continued to be so controlled for some years thereafter. The cheap water transportation afforded by the Great Lakes and the Mississippi River enabled the white pine to control this market until the supply became inadequate to the demand, and, in fact, exhausted. Thereafter this market became to a certain extent a battle ground between the Washington and Oregon lumber and the western pine from the Spokane district on the one hand and the southern pine on the other; but the unexampled revival of industry and increase in general business prosperity enjoyed by this middle district since 1897 has created such an enormous demand for lumber and forest products that this competition between western and coast lumber and southern lumber seems to have had but little effect in keeping down the price of lumber.

VII.

The superseded rates of 1893 were voluntarily continued in force by the carriers until November 1, 1907, and during that period, especially during the last few *few* years thereof, under this rate 1794
the lumber industry of this coast territory increased enormously. Many mills were built in the interior where they were solely dependent upon rail transportation. Except a limited number of mills situated at points like Portland, Oregon, the great majority of the mills engaged in this industry are wholly dependent on the railroads for an outlet to markets. As the industry has grown it has prospered and been profitable ever since the 40-cent rate went into effect. At the time of the hearing of these cases before the commission the amount invested in the lumber business in Oregon was approximately $60,000,000.00, exclusive of mills, logs, standing timber, and timberland. Approximately 40,000 persons were directly engaged in the industry. The annual pay rolls exceeded $20,000,000.00, and the annual output of lumber exceeded 2,000,000,000 feet. There is no sufficient data in the record from which to accurately state the number of lumber-producing plants in all this coast territory, the amount of the investment therein, or the number of men employed therein, but it clearly appears that there are many hundred mills in which are invested many millions of dollars and in which many thousands of men are employed; that the annual output has been constantly and rapidly increasing in recent years; and that the industry is the most important one of that region.

Part of the product of the mills of this coast territory are practically subject to no competition because of the superior nature of the lumber. On long timber there is little or no competition from other producing points. A certain portion of the lumber manufactured on the north Pacific coast can compete successfully with other lumber

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in any market. They there produce certain dimensions and qualities that are produced to but a limited extent for delivery elsewhere.

These qualities are the choice portions of the logs. Necessarily
1795 in producing them a large quantity of common lumber is also produced. The greater part of this common lumber finds its market locally or in the near-by States and in Colorado, Nebraska, and North and South Dakota. Comparatively little of this common lumber reaches the Missouri and Mississippi River territory. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates.

The combined north Pacific Coast States market about 5 billion feet annually as against approximately 19 billion feet of southern and white pine, showing that the southern and white pine predominate and fix the price in competitive markets.

During the summer of 1907 it became known and understood among the lumber trade that the then existing rates were to be increased. The industry immediately began to feel in some degree the effects of this unsettled rate situation. Purchasers at destination points began to postpone the placing of orders and to cancel orders already placed. The reasons given were that on account of the increase in rates lumber would be cheaper in the near future. One salesman testified that on a trip where he would ordinarily take orders for from 300 to 500 cars of lumber he was unable to get a single order because he would not guarantee the old rates. Dealers and purchasing agents of railroads refused to buy on the ground that after the advanced rates became effective there would be a falling off in the price of lumber caused by the surplus that would exist in producing territory which could not reach its former competitive markets under the advanced rates.

At and for some months prior to the hearing of these cases before the commission the lumber industry in this coast territory was greatly depressed and a large percentage of the mills had been shut down and were not in operation.

1796 At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business.

At the time the superseded rates were installed stumpage in the coast district was very low, some purchases being made at 25 cents per thousand feet. This low price continued for some time after that date and comparatively few mills took advantage thereof. As the area of the white pine in Wisconsin, Michigan, and Minnesota decreased the value of Pacific Coast stumpage increased, as did also the value of the yellow pine stumpage of the Southern States. The increase in the price of Pacific Coast stumpage has been gradual and steady since 1893. The greatest increase has occurred since 1902 and the largest part of that increase has taken place since 1905. Prior to the advance in rates in November, 1907, prices in Oregon ranged from $1.50 to $2.50 per thousand feet and along the Columbia River

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it was as high as $3.00. The majority of the millmen own their stumpage, but the majority of the stumpage is not owned by the millmen. Many large tracts are held by individuals and corporations that are not engaged in the manufacture of lumber. The price of logging has gradually increased until at the time of the hearing of these cases before the commission it cost between $5.00 and $6.00 per thousand feet to get logs to the mill. In some parts of Oregon it was even higher. The price of logs in the open market has likewise increased since 1893 from $2.50 to $3.00 per thousand feet, in the year 1893, up to $6.00 in 1900. This price continued until 1902, then with various increases and fluctuations to 1904 and 1905. In 1905 the price reached $9.00 per thousand feet. Following the Valparaiso and San Francisco disasters the price increased during 1906
1797 and 1907 to $13.50 per thousand feet. After the announcement was made that the lumber rates were to be advanced the price of logs fell off $1.00 per thousand feet in the month of July, 1907; in August, 1907, the price fell off $1.50 per thousand feet with a corresponding fall in the month of September. And the total decrease from August to December was $4.00 per thousand feet. At the time of the hearing of these cases before the commission fir logs were sold for $9.00 per thousand feet in Portland, which price included a 50-cent towage charge.

The cost of manufacturing lumber has kept pace with the increased cost attendant upon all other industrial pursuits. From 1904 to 1907 the advance has been between 35 and 40 per cent in both labor and material. The increase in labor exceeds the increase in material, but the two make an average of about 40 per cent.

During the year 1906 the millman's average profit per thousand feet upon all classes of lumber produced by them ranged from $1.60 to $2.80. A lower profit was made by mills that bought logs in the open market or those operating where logging was more expensive. The higher profit was made by mills that owned their own stumpage, for which they charged themselves from $1.00 to $1.50 per thousand feet. Some of the mills that made a profit of $2.80 per thousand feet in 1906 made a profit of 26 to 50 cents per thousand feet in 1905. The unusual general prosperity of the year 1906 coupled with the extraordinary demand for lumber caused by the Valparaiso and San Francisco disasters undoubtedly account to a considerable extent for the sharp increase in profits in the year 1906.

In the year 1890 there was a decided predominance in the empty-car movement east-bound, amounting at that time to about 161.17 per cent over the west-bound empty-car movement on the North-
1798 ern Pacific Railway. In 1891 the predominance of east-bound empty-car movement over west-bound had decreased to 72.17 per cent and in 1892 it had further decreased to 4.35 per cent. In 1893 and all subsequent years down to 1907, conditions have been reversed and during this entire period there has been a large predominance of west-bound empty-car movement over the east-bound on the Northern Pacific Road. Approximately the same condition prevailed

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during the year referred to upon the Great Northern Road. In 1893, when the Great Northern was completed to the coast, the west-bound loaded-freight-car mileage on the main line between Havre, Montana, and Seattle, Washington, was 3,688,568 as against 2,366,546 east-bound. At the same time the west-bound empty-car mileage was 607,088 as against 1,922,262 east-bound. In 1897 the west-bound loaded mileage was 7,104,181 as against 10,050,979 east-bound, whereas the empty west-bound mileage was 3,527,377 as against only 576,071 east-bound empty mileage. In 1906 the west-bound loaded mileage was 22,939,649 as against 32,323,906 east-bound loaded mileage, whereas the west-bound empty mileage had increased to 11,860,201 as against 1,806,850 east-bound empty mileage.

Ever since 1903 the condition in respect to the predominance of empty-car mileage has been changing, until in 1907 the west-bound empty-car movement greatly predominated over the east-bound empty-car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East. The establishment of manufacturers of finished products in the West has to a certain extent diminished the volume of manufactured products moving from the East to the West. In 1890 upon the Northern Pacific the predomination of west-
1799 bound loaded-car mileage over east-bound loaded-car mileage amounted to 57.23 per cent, while in 1906 the predomination of east-bound loaded-car mileage over west-bound loaded-car mileage amount to 43.40 per cent and in 1907 to 3.2 per cent. This sharp and sudden decrease in the percentage of east-bound loaded-car mileage over west-bound loaded-car mileage in the year ended June 1, 1907, was, however, not normal, but due to temporary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months.

The empty-car movement westward predominates to a greater extent on the Great Northern and other lines, on which the products of mines constitute a greater proportion of the traffic handled than forest products, than on the Northern Pacific line, which hauls a much larger percentage of forest products than do the other carriers. For the year ending June 30, 1907, the percentage of tonnage constituting all products of mines out of the total number of tons carried on the Great Northern Railway was 51.75 per cent and all forest products 14.50 per cent. On the Northern Pacific the percentage of mine products out the total tonnage was 21.05 per cent and of the forest products 37.38 per cent. A similar situation is shown to have existed on the Union Pacific system during the same period.

During all the period involved in this discussion, viz, from 1893 to November 1, 1907, the cost of operation of the complainants' roads

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has constantly increased. This increase is fairly illustrated by
1800 the testimony of the witness R. I. Farrington relating to the cost of operation of the Great Northern Road. He testifies: "Taking the year 1895 as one hundred per cent, the cost per freight-train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight-train mile was 207.7 of 1895. Of course in 1907 it is more than twice what it was in 1895 per freight-train mile. Per freight-car mile, using 1895 as one hundred per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895."

Concurrently with this increase there has been a persistent and well-directed effort on the part of all the carriers to wisely economize in the matter of cost of operation, and such results have been achieved as to preclude the idea that the increase in the cost of operation is due to any failure in wise and economic operation. The testimony clearly indicates that all these roads are wisely and economically handled, at least so far as cost of operation is concerned.

Since 1897 the lumber industry of this coast and Spokane territory has developed and increased so rapidly that it has constantly outrun the capacity of the roads to handle it, and these roads have been compelled ever since 1897 to spend vast sums in improvements, extensions, and for more powerful equipment in order to keep pace with the ever-increasing east-bound traffic from those points. Other species of east-bound traffic have also increased, but the greatest increase is shown to be in the lumber traffic.

During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly
1801 satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surplusses, and clearly appear to have been on the whole prosperous and to have earned fairly satisfactory net incomes from their transportation.

By the orders here under discussion the commission restored the rates in force immediately prior to November 1, 1907, as far east as the so-called Pembina–Port Arthur line and to the territory east thereof, permitted an advance of 5 cents per one hundred pounds, which operated to fix a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and Duluth. By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was established. The short-line distance over this system from Portland to Omaha is 1,799 miles, and to Kansas City and other Missouri River points is 2,030 miles. From the evidence and exhibits offered it fairly appears that this 50-cent rate over this system will result in a revenue of 5.56 mills per ton mile to Omaha and 4.92 mills per ton mile to Kansas City, and that such revenue

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is far below the average revenue per ton mile on any of the complainant roads, and that this 50-cent rate over this system to Omaha is a very low rate. The distance from Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, 2,052 miles, and from Astoria to St. Paul 2,072 miles. Omaha and St. Paul are on a parity as bases of through rates and are so considered by the commission and by rate experts. (See commission's decision in Spokane v. Northern Pacific Ry. Co., decided June 7, 1910, 19 I. C. C. 162.) By the orders here under discussion the commission prescribed a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and Duluth. This rate will undoubtedly result in
1802 a revenue to the northern lines measurably less than the revenue yielded to the Union Pacific line by the 50-cent rate to Omaha. Under the old 40-cent rate to St. Paul the revenue per ton miles accruing to the northern lines was 3.90 mills, and under the 50-cent rate installed November 1, 1907, would have been 4.87 mills from Portland to St. Paul. From Tacoma to Minneapolis under the 40-cent rate it was 3.98 mills per ton mile, and under the November 1, 1907, 50-cent rate it would have been 5.27 mills.

Evidence was offered by the Great Northern Railway Company and the Northern Pacific Railway Company for the purpose of proving the value of the systems of railroads owned and operated by each of said companies, respectively. This evidence consisted primarily of schedules of all items of physical property based upon the present cost of reproduction. These schedules were prepared in great detail, and the evidence indicates that they are the result of extended examination of records of these companies, inspection of the properties and consideration by competent experts of the various questions involved in an appraisal of this kind. These schedules were examined and checked by the defendant during a period of about six months pending the hearing of these cases. The record of the companies were open to the force employed by the defendant for that purpose, under the direction of an engineer selected by it, and while it is probable that in view of the large volume of records bearing upon the cost of construction of various items of the property, the defendant was not able to fully examine all the records in that regard, it appears that they were thrown open to it and opportunity offered for as full and complete examination of them as it elected to make. At the conclusion of this examination the engineer selected by the defendant appeared before the master and evi-
1803 dence produced by him is in the record. It is sufficient to say that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results

reached are not widely apart from those reached by the engineers of the railroad companies.

Evidence was also offered by the two companies in question of the values of their properties based upon computations from market prices of stocks and bonds for fairly representative periods. This method of ascertaining the value of railroad property seems to have the support of a number of decided cases, and is of value in the consideration of questions of this character.

The record contains evidence of the amount of outstanding stocks and bonds of these two companies, together with a full showing for recent years of current results of operation. There are in evidence exhibits showing gross revenues, operating expenses, taxes, net revenues, amounts of interest paid upon obligations, dividends paid, amounts appropriated from income for various purposes, and, in fact, all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures.

Of the methods made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved.

1804 In the determination of the issues presented by these cases, involving as they do rates upon a single item of traffic, the value of the total properties of these companies is of only indirect bearing. The defendant commission appears to have reached this conclusion and to be of that opinion because in a case of like character involving rates on lumber from southern and southeast points of production to the Ohio River and north thereof it held to that effect. (Central Yellw Pine Association v. Illinois Central Railroad Company, 10 I. C. C. 529.)

The master does not understand that these companies offer this evidence upon the theory that it will directly aid in the determination of the issues here involved. They do offer it for the purpose, as stated, of demonstrating that the return during recent years upon the fair value of these properties has not been and is not excessive; they argue that if the rates upon lumber and other forest products embraced within their tariffs filed November 1, 1907, are neither unjust nor unreasonable, the results of the operation of these companies justify the effort thus made to increase revenues to meet increased cost of operation.

In the conclusion at which the master has arrived it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds.

The evidence clearly shows that these lines of railroad are well located and maintained; that they are efficiently operated and occupy

a portion of the country from which it is reasonably plain that under normal conditions they may expect a constantly growing vol-
1805 ume of traffic; they seem to have, from the vitality of their own organizations, as well as that of the industries tributary to them, the cities, towns, and general character of the country through which they operate, all of the valuable elements ordinarily comprehended within the term "going concern," and from the fact that they have been established and in operation for many years and during recent years at least with fair results, they each have the advantage which flows from long and favorable relations with the shipping public over and above a new road or roads constructed or operated through the same territory. These considerations in every line of business indicate important elements of value over and above mere cost of construction, and justify the conclusion which is fortified by ample authority that there exist in these properties large elements of value of this character.

The defendant in these cases has directed attention to the annual reports of these companies and other forms of statistical information tending to prove favorable results from operation, and it is sufficient to say in considering the arguments thus advanced that they are largely supported by the statistics referred to, and lead to the necessary conclusion that the properties contain elements of value in large measure as a direct result of the successful operation referred to.

It may properly be said, however, in considering the arguments offered by the defendant that these companies have been able to pay interest and dividends at a fair rate and accumulate surplus funds which have been appropriated from income and reinvested in the property, that such conditions are necessary, within proper limits, in order to enable companies of this kind to meet the tremendous increases in cost of operation incurred in recent years and the growing demands upon them for increased facilities to acommodate the growing commerce of the country through which they pass. Upon
1806 the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case the results from operation of either of these companies were in any degree excessive.

On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames (169 U. S., 522), and subsequent decisions, if that were necessary or immediately germane to the issues here presented it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions.

CONCLUSIONS OF LAW.

Upon consideration, the master has adopted the following conclusions of law which, in his judgment, govern and control the decision of these cases:

(1) A just and reasonable rate within the meaning of the interstate commerce act is a rate which (a) furnishes to the carrier just compensation for the services rendered, and fairly, reasonably, and justly recognizes and considers his common rights and interests in the traffic under consideration; (b) which fairly, reasonably, and justly recognizes and considers the interest of the public in such traffic; (c) which fairly, reasonably, and justly recognizes and considers the interests of the shippers in such traffic, and (d) which on its face does not manifest or evince any arbitrary violation, perversion, or disregard of the spirit or intent of the interstate commerce law, but appears to have been made or promulgated fairly, justly, and reasonably in accordance with the fundamental principles of the law.

1807 (2) The Constitution guarantees just compensation for private property devoted to a public use, and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation cannot be predicated upon it.

(4) In determining the justness and reasonableness of the net returns to a railroad a principal consideration is the value of the property devoted to the public use; and in determining this value the reproductive value, or a just estimate of what it would presently cost to reproduce the properties as they presently stand, is of considerable material aid.

(5) But where the question under consideration is the justness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate.

1808 (7) The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts.

(8) It is, however, limited in the exercise of its authority, first, by constitutional limitations, second, by specific limitations contained in its organic act, and third, by the spirit and intent of its organic act and the fundamental principles underlying its organic act.

(9) An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted.

(10) Federal courts of equity have the power and are charged with the duty to relieve from orders of the Interstate Commerce Commission which deprive complainants of their property without due process of law or take it without just compensation, from orders which are beyond the delegated power of the commission, and also from orders which evidence so unreasonable and arbitrary an exercise of its power and which are so inherently inconsistent with and violative of the spirit and intent of the interstate commerce act as to be substantially without, though formally within, their delegated authority.

(11) An order which on its face is inherently inconsistent with the fundamental principles of rational justice and palpably violates and perverts the spirit and intent of the interstate commerce act,
1809 though in form within the limits of delegated power is in fact beyond those limits, and is an unlawful order, and one which results in taking of property without due process of law.

(12) On pages 39, 40, and 41 of volume one of the record, appears certain objections entered by the defendant to the admission of evidence in these cases. Objection number one subdivided into sections A and B object to any testimony which does not show that the rate fixed by the Interstate Commerce Commission is confiscatory of the property of the carriers within the meaning of the fifth amendment to the Constitution of the United States, and to any testimony which tends to show that such rate is otherwise (aside from the question of confiscation) unreasonable.

This objection is overruled for the reason that while a rate may not be confiscatory it may yet be so unjustly discriminatory and unduly preferential and may so arbitrarily violate the fundamental principles of rational justice and the spirit and intent of the interstate commerce act as to amount to the taking of property without due process of law; and any evidence which tends to show such a situation is admissible and can be considered by the court.

Objection number two is based upon the claim that the allegations of the bills are not broad enough to amount to an allegation of confiscation.

This objection is overruled. The bills allege that the rates fixed by the commission are so unremunerative and so far below what is just and reasonable as to be confiscatory. I think the allegations are broad enough to admit of proof of confiscation. The Constitution provides that no property shall be taken for public use without just compensation. The interstate commerce act provides that all rates shall be just and reasonable. The language of these two pro-
1810 visions means the same thing and by these two provisions of law a point is fixed below which a carrier can not be compelled to go, and above which it may not lawfully go. Anything less than

that which is just and reasonable will necessarily amount to confiscation and therefore when a rate is attacked on the ground that it is less than that which is just and reasonable it is in effect an allegation of confiscation and permits the courts to inquire into the rate to the extent of ascertaining whether or not it is so low as to be less than just and reasonable.

Objection number three is based on the claim that no new and additional evidence is admissible for any purpose unless the complainants have first presented or offered to present the same to the commission for its consideration, or in effect taken such proceedings as amount to an application for a new trial.

This objection is overruled upon the authority of the Court of Appeals for the Eighth Circuit in Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission (164 Fed. 645), wherein it is held: "It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to an ascertainment of what was determined by the commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but on the contrary the hearing may be de novo, and may include the taking and consideration of evidence other than that before the commission."

Objections 4, 5, and 6 are elaborations of the principles sought to be enforced in objection number three.

Objection number four proceeds upon the principle that no new or additional evidence is admissible unless it is what is known in law as newly discovered evidence; that is, evidence unknown to the complainants at the time of the hearing before the commission.

1811 Objections numbers 5 and 6 proceed upon the principle that no such newly discovered evidence can be offered unless it has previously been offered to the commission for its consideration and the commission has failed or refused to hear it.

The point of these objections is that it is unfair for a carrier to fail to take advantage of the opportunity offered under the law by the commission for a full hearing and thereafter apply to the courts to protect it against orders which might never have been entered had the carriers so taken advantage of their opportunity for a full hearing.

In such a case a carrier would be without any standing in a court of equity, for he would not be coming into a court of equity with clean hands. But where it appears that a carrier honestly and in good faith has presented his case to the commission on a complaint, and in good faith presented to the commission for its consideration all the evidence then in its possession, it ought not to be, and is not, precluded from presenting to the courts in a suit for an injunction any other evidence relative and material to the suit of which it may avail itself. The objection seems to proceed upon the theory that a hearing before the commission is like a suit at law, and that the commission's decision is dependent upon the record, and that to disturb the decision by other evidence can only be done by the presenting of

newly discovered evidence not within the knowledge and possession of the carriers at the time of the trial, and that the decision can only be disturbed on this ground by a proceeding before the commission analagous to a motion in a suit at law for a new trial upon the ground of newly discovered evidence.

This theory is quite at variance with the defendant's other theories and claims as to the powers of the commission. The commis-
1812 sion is not confined in its decision to the consideration of the particular evidence submitted to it in any hearing, but is supposed to possess all knowledge and wisdom pertaining to the matters under consideration, and is at liberty to use all knowledge it may possess or obtain by any means both within and without the record. And the evidence actually submitted to the commission in any case is as a rule but a small part of the knowledge upon which the commission bases its decision. We think the court ought not to decline to hear a complainant on the ground that he has not first presented all his case to the commission, unless it appears that his failure in this respect amounted to a fraud on the commission and was a deliberate neglect to avail himself of the opportunities offered by the commission for a full hearing. Nothing of the kind appears in this case, and the objections to the new and additional evidence are overruled.

DISCUSSION.

"Section 1 of the act to regulate commerce" provides, among other things, "all charges made for any service rendered in the transportation of passengers and property * * * or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

This section further imposes upon common carriers the duty to furnish transportation at "just and reasonable rates applicable thereto."

Section 2 defines, prohibits, and declares unlawful any unjust discrimination between persons by means of special rates, rebates, drawbacks, or other devices, and section 3 declares it to be unlawful for any common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company,
1813 firm, corporation, or locality, or any particular description of traffic in any respect whatever, or to subject such persons, entities, localities, or particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 15 provides that the commission is authorized and empowered and it shall be its duty whenever, after a full hearing upon a complaint made as provided in section 13 of the act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property as defined in the first

section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or discriminatory, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what practice or regulation in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that such carrier shall cease and desist from such violation to the extent to which the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rates or charges so prescribed, and shall conform to the regulations or practice so prescribed. An analysis of this power and authority resolves it into three divisions. The commission has power to interfere (a) when rates are unjust and unreasonable,
(b) when the rates and also the practices and conduct of the
1814 business are unjustly discriminatory or unduly preferential,
and (c) when specific requirements of the statute are violated.

And the remedies which they are authorized to determine and prescribe for the future are: (a) Just and reasonable rates, (b) just, fair, and reasonable regulations and practices, and (c) orders compelling the abandonment of illegal practices consisting in violations of specific requirements of the statute.

A principal question in these cases is as to the extent of the powers thus conferred on the Interstate Commerce Commission and particularly as to the extent of the powers stated in subdivision (a).

While the bills allege that the rates fixed by the commission are so low, unjust, and unreasonable as to result in an undue preference of the lumber traffic over other descriptions of traffic and discrimination in its favor against other species of traffic, still they nowhere point out any particular class or species of traffic which is discriminated against, and nowhere point out where, to what extent, or in what manner such discrimination is had, nor state any facts upon which discrimination and undue preference can be predicated.

The substance of those allegations of the bills with which the master is concerned is that the rates fixed by the commission are so low and unremunerative as to be unjust and unreasonable, and therefore the commission exceeded their power in prescribing them, and are taking the carriers' property without due process of law, and further that because the rates are unjust and unreasonable and less than what is just and reasonable they are confiscatory and in violation of the constitutional guaranty of just compensation.

It will be seen therefore that the cases turn almost entirely upon
the extent of the power conferred upon the commission to fix
1815 rates for the future. The defendant claims that in the matter
of fixing rates for the future under the circumstances and within the statutory requirements conferring jurisdiction to inquire (such as complaint, notice, full hearing, etc.), their power is as full, plenary,

and absolute as is the power of Congress itself: that its reasons, motives, and discretionary powers may be as broad and plenary as those of Congress, and that its conclusions can only be attacked on constitutional grounds as a confiscation.

The complainants on the other hand claim that this power is a limited power, limited not only by the constitutional guarantees of just compensation and due process of law, but limited also by the terms and language of the statute itself, and that if it can be shown that any rate fixed by the commission is not just and reasonable, but is unjust and unreasonable in and of itself, it is an unlawful rate and beyond the power of the commission to prescribe or enforce.

The solution of this proposition depends entirely upon the interpretation to be put upon the words just and reasonable. If the interpretation of these words is to be based upon their widest sense, and upon all the reasons and considerations which Congress might entertain in the enactment of a statute including all grounds of public policy and all those considerations upon which rest the exercise of police power, then the position of the defendant is correct.

If, on the other hand, they are to be interpreted in a common and limited sense, and in a business sense, as applied to the business transactions between shippers and carriers, then this contention of the defendants is not correct, and the court may determine whether or not these rates are in truth and in fact in and of themselves just and reasonable and therefore lawful, or unjust and unreasonable, and therefore unlawful, and in the latter event enjoin their enforce-
1816 ment as an unlawful and unwarranted exercise of power which amounts to the taking of property without due process of law.

What then is a just and reasonable rate within the meaning of the interstate commerce act?

In the first place the Constitution supplies an absolutely essential and necessary ingredient or characteristic. It guarantees just compensation for private property taken for a public use and any rate which violates this guaranty is a void rate. In Missouri, Kansas & Texas R. Co. v. Interstate Commerce Commission, a case from the Eighth Circuit in 164 Fed., 645, the court said: "Its (the commission) determination or action does not and cannot preclude judicial inquiry into the justness and reasonableness of the rates within the meaning of the constitutional guaranty, for that is a judicial question." "Neither Congress nor any legislative or administrative body acting by its authorization can competently establish rates for the transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all circumstances is just and reasonable, since such action would deprive it of its property without due process of law and would be a taking of its property for public use without just compensation in violation of the fifth amendment to the Constitution." Just compensation means the fair and reasonable value of the property taken. In condemnation proceedings it means the fair and

reasonable value of the property for the highest use to which it can fairly and reasonably be put.

Applied to transportation rates it must mean the fair and reasonable value of the particular service rendered, provided such services are rendered under normal circumstances. It is frequently said that regard must also be had to the rights of the public and to the interests of the shippers. In my judgment this means that a rate may
1817 not be so high as to prevent the free access by the public to those commodities which they desire and require; or, in other words, so high as to prevent the free movement of the traffic, nor may a rate be so high as to practically divert a shipper's profit into the treasury of the carriers, and thus destroy the shipper's business. But these considerations are in a measure secondary, and can only apply after the first requisite of just compensation has been complied with. The prime consideration is the constitutional consideration of just compensation to the carrier. He is devoting his labor and property to a public use, and under the law is compelled to do so. He may not refuse the traffic. He must respond to its demands. But for his service and his property he is entitled to just compensation, and no law can deprive him of it.

It is further said that just and reasonable rates need not necessarily guarantee a profit to the carrier. But this is simply another way of applying and illustrating the rule that a person is entitled to the fair and reasonable value of his property for the highest use to which it can reasonably and fairly be put.

Of course a poorly and injudiciously projected road, which is not a reasonable commercial necessity, and is not commercially justified, and which is poorly and wastefully operated, cannot expect to extort a profit out of the patrons which may be necessarily dependent upon it.

It is the value of the property for a reasonable use that is to be determined. An expensive house situated in the midst of a swamp would add no considerable value to the property, and the owner would not be entitled to a compensation for the cost of his house. A house well located commercially may by ill usage depreciate,
1818 and in determining its value for any purpose the expense of restoration would have to be considered and deducted.

Reasonable rates are therefore always to be based upon normal conditions, and determined with a view to whether or not the road is reasonably justified as a commerical enterprise, is a reasonable commercial necessity, is normally operated with reasonable economy and skill.

But when all is said of those characteristics of a just and reasonable rate, it is still true that the distinguishing characteristic of a just and reasonable rate is just compensation, and that these other characteristics are what is known in logic as incidental characteristics.

The Constitution fixes this absolute point below which no carrier can be compelled to go. The interstate commerce act does not permit

him to go above it. Anything more than this is a violation of this law, and anything less is a violation of the constitutional rights.

The next question is, how far does this distinguishing characteristic extend?

Inasmuch as it is the entire body of the property which is devoted to the public use, does this characteristic extend merely to the entire body of net revenues returned to the carriers, or does it extend to and characterize each particular rate and segregated element of the income?

In theory and on principle this latter proposition ought to be true. Each rate ought in and of itself, in order to be just and reasonable, furnish just compensation for the service rendered, and if each rate were just and reasonable the entire body of net returns would also be just and reasonable. In Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, cited above, the court said: "Rea-
sonably interpreted the statute, by which alone the Interstate
1818a Commerce Commission derives its power, unmistakably re-
quires that all rates prescribed thereunder shall be just and reasonable within the constitutional guaranty, and also that they shall not be unjustly discriminatory or unduly preferential; and those requirements plainly operate as limitations upon the power of the commission."

No doubt it is the spirit and intent of the interstate commerce act that each particular rate shall be in and of itself a compensatory rate, and that the theory of the statute is that if each rate is in and of itself just and reasonable the entire body of net returns will also be just and reasonable.

But because of the many stubborn and obtrusive difficulties in the way of the practical application of this proposition, because it is practically impossible with any degree of satisfactory accuracy to determine the cost of a particular traffic, or the proportion of the company's property devoted to its use, or whether or not in and of itself it yields a profit, and because also the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because, also, it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy, it has been held, in actions based upon the charge of confiscation through the reduction of a single rate or segregated portions of the general body of business, that this distinguishing characteristic of just compensation does not extend to a single rate, and need not be considered in determining whether or not it is just and reasonable, beyond the question as to whether or not it so affects the general body of net returns as to reduce them to less than just compensation.

In other words, confiscation cannot be predicated upon a single
rate in and of itself, particularly because it is impossible
1818b to ascertain the true facts in reference thereto, but can only be
predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness

and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns.

It is contended that the following cases, decided by the judges of the Eighth Circuit and the Supreme Court, are authorities against this contention and establish the doctrine that a rate must be compensatory in and of itself. (Southern Ry. Co. v. St. Louis Hay Co., 214 U. S., 297; Stickney v. Interstate Commerce Commission, Supreme Court, January 10, 1910; Peavey & Co. v. Union Pacific Ry. Co. (Eighth Circuit), 176 Fed., 409.)

It will be observed, however, that those cases involved charges for incidental services rendered by and to carriers in aid of transportation, which charges are by the terms of the interstate commerce act required to be stated separately. The charges in the hay case were charges for a special privilege "in no sense a part of the transportation and outside thereof."

The charges in the Stickney and Peavey cases were charges paid by the carriers to third persons who rendered services in aid of transportation, and section 15 of the interstate commerce act makes it the duty of the commission to determine the value of those services in and of themselves at a just and reasonable rate.

Manifestly an order made in the exercise of this power, absolutely or in part destroying an incidental charge considered to be just and reasonable in and of itself, is confiscation of the grossest kind, 1819 in addition to being a gross abuse and perversion of authority and the taking of property without due process of law.

It seems clear, therefore, that in cases involving a single rate, such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out.

The defendant claims that this conclusion must necessarily determine these cases in its favor. There is no evidence in the record clearly showing or, indeed, attempting to show, that this lumber rate prescribed by the commission will so affect the general body of net returns as to materially reduce them from what they have been, and it is conceded on all sides that the carriers are and have been fairly prosperous, and that their net incomes have been fairly satisfactory at least.

The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost.

And the defendants claim that no confiscation having been shown it necessarily follows that the rates are just and reasonable.

It must be remembered, however, that this rule confining the inquiry as to confiscation in the matter of a single rate to the relation and effect of that rate to and upon the general body of net returns is not a rule based upon theoretical justice, but is a rule of convenience compelled by the exigencies of the situation. It is founded upon compulsion, and not upon principle. Furthermore, like all
1820 other rules of law, it is intended and promulgated in the interests of justness and reasonableness, and not to promote injustice and unreasonableness. It can not be used as a shield behind which the commission may hide, and with which they may protect themselves in the arbitrary and inequitable exercise of their powers. It is true the commission is an administrative body, exercising delegated legislative powers, and that the wisdom and expediency of the lawful discharge of their administrative opwers may not be questioned by the courts.

Nevertheless, it must be remembered that the power of the commission to fix and determine rates is a limited power. In Missouri, Kansas & Texas Ry. Co. v. Interstate Commerce Commission, 164 Fed. 645, the court said: "Power to determine and prescribe what are just and reasonable maximum rates to charged in interstate commerce is in a limited way conferred on the Interstate Commerce Commission by section 15 of the interstate commerce act."

It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws.

But an administrative body is not so free to do as it pleases, but in addition to those specific limitations pointed out by the Constitution and the particular provisions of its organic law, is always and forever limited and controlled by the spirit and intent and the fundamental principles of the organic law creating it. It may not, therefore, while acting within the forms of its delegated powers, promulgate rates and regulations which in effect violate the spirit and intent of those powers.

It is the intent and purpose of the interstate commerce act that the commission shall determine and prescribe just and
1821 reasonable rates, just and reasonable regulations, just and reasonable conduct and practices, and shall prevent unjust discrimination and undue preferences.

It shall not make or permit any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or particular description of traffic "in any respect whatsoever," nor shall it subject such persons, entities, localities, or particular descriptions of traffic, to any undue or unreasonable prejudice or disadvantage "in any respect whatsoever."

They must not only be just and reasonable so far as the matter of compensation is concerned, but must be further just and reasonable in all respects. They must exercise their power in a just and reasonable

manner and arrive at their conclusions through just and reasonable processes, and those conclusions must be just and reasonable in all respects. They may not be unjust and unreasonable in any respect whatsoever. They cannot content themselves with arriving at a result technically and in terms and form just and reasonable through an arbitrary, unjust, and reasonable exercise of their powers. Justness and reasonableness must permeate, tincture, and characterize the entire proceeding, and the result must also be in truth, in spirit, and in fact just and reasonable, and not merely so in form and terms.

A rate may be unassailable on constitutional grounds, may be absolutely free from confiscatory features, and yet in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate commerce act.

A law passed in the interests of and to promote justness and reasonableness may not be used to perpetrate injustice and unreasonableness any more than the statute of frauds can be used as an instrument to perpetrate fraud.

1822 For this reason there does inhere in the Federal courts of equity power to review rates made by the commission above and beyond constitutional questions and questions as to the technical limits of delegated power, and to inquire whether or not the delegated power has been exercised in a just and reasonable manner, and within the true spirit and intent of the law, and to relieve from such orders as, though not technically confiscatory or discriminatory and not technically beyond the terms of the statute, are nevertheless so inherently inconsistent, unjust, unreasonable, and violative of common right as to be on their face unjust and unreasonable orders in the common sense of the terms.

In the case of the Interstate Commerce Commission v. Illinois Central R. R. Co., decided by the Supreme Court January 10, 1910, Mr. Justice White uses the following language: "Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider, (a) all relevant questions of constitutional power and right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz, whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power."

In Louisville & Nashville R. R. Co. v. Interstate Commerce Commission, decided April 9, 1910, by the Circuit Court for the
1823 Western District of Kentucky, the court used this language: "If the order were so unreasonable or so manifestly unjust as

to induce the belief that the fundamental principles of rational justice had been disregarded * * * it would be our duty to prevent such a consequence by awarding an injunction." In Peavey & Company v. Union Pacific Railway Company, recently decided by the judges of the Eighth Circuit, the court said: "The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts. But the power is vested in and the duty is imposed upon the Circuit Courts to relieve from orders of the commission which * * * though in form within its delegated power evidence so unreasonable an exercise of it that they are in substance beyond it." In Stickney v. Interstate Commerce Commission, (164 Fed. 638, 644, 645), the court said: "The finding of facts on controverted and conflicting evidence by such bodies, when not brought about by fraud or mistake, is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded, or established without dispute admit of but one legal conclusion and a different and erroneous one is reached by reason of a misconception and misapplication of law by such bodies, their action is subject to review and may and ought to be avoided by the courts."

These decisions do not mean that the courts may substitute their own opinion for that of the commission. They do mean, however, that whenever an order is so inherently inconsistent with and violative of the fundamental principles of rational justice as to clearly evince an arbitrary disregard for and perversion of the true spirit and intent of the interstate commerce act, it is an unlawful and unauthorized order, and one from which the courts have power and are bound to grant relief.

1824 Applying the principles arrived at in the foregoing discussion to the facts exhibited in the record, I am compelled to the following conclusions:

There is no evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations.

It does, however, appear that they are very low rates, and unusually favorable to the shippers and to the public.

In restoring the superseded rates to the Pembina–Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point.

If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates.

The difficulties and expenses of transportation over the Union Pacific line and the northern lines are fairly equal. The route over

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the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates.

The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable.

If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly
1825 prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities.

It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised.

These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5 cents per one hundred pounds differential to Chicago, while the northern lines are allowed 10 cents. And the 10-cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific Road to make the haul from Omaha to Chicago for 5 cents and allow the north-
1826 ern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order.

In determining the issues before it the defendant ordered the rates from the coast territory to the so-called Pembina–Port Arthur line, and destinations west thereof, restored to the basis in existence immediately prior to November 1, 1907. To the territory east of that line it permitted an advance not to exceed 5 cents per hundred pounds over the rates in effect immediately previous to November 1, 1907. The defendant in this way presented the matter in a double aspect

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and in the consideration of the questions involved in these cases, the master has followed the same course and will state his conclusions in that order, that is to say:

(1) Does the evidence justify or require that the orders of the defendant, restoring the rates in existence prior to November 1, 1907, on and west of the so-called Pembina–Port Arthur line shall be enjoined, that is to say, does the evidence, giving to it all of the weight to which it is fairly entitled, overthrow the presumption that the orders in that regard are valid or, applying the test indicated by the recent decision of the Supreme Court of the United States in Interstate Commerce Commission v. Illinois Central Railroad Company, et al. (— U. S., —), does the evidence establish that "the assertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power?"

(2) Turning to that portion of the orders setting aside the rates filed by the carriers and effective on November 1, 1907, to points east of the so-called Pembina–Port Arthur line, and, in lieu thereof, permitting an advance over the pre-existing rates not to exceed 5
1827 cents per hundred pounds, and applying the same tests above referred to, are the results such as to lead to the necessary conclusion that the injunctive order of this court should issue?

Dealing with these questions in the order stated, it appears that in considering the conclusion reached by the defendant the rate from the coast district to Omaha may be taken as illustrative.

The short line distance from Portland to Omaha is stated by the commission in its decision in the so-called Oregon case (No. 1327) to be 1,799 miles. From the exhibits offered before the commission it appears that this is substantially correct, and that the 50-cent rate restored by the orders of the commission results in revenue of 5.56 mills per ton mile. To Kansas City, another Missouri River point to which the same 50-cent rate applies, the distance appears to be 2,030 miles, with a resulting ton mile earning of 4.92 mills. Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low. That is not the duty of this court, however, and the action of the commission in ordering these and all other rates to this so-called Pembina line restored, and thereby approving them as just and reasonable, is to be tested by the rules herein above referred to.

The revenue per ton mile thus returned is much below the average revenue per ton mile derived from all commercial business on the lines of either of the complainants. It is below the average revenue per ton mile from lumber on the Union Pacific system for any of the recent years. It is substantially below average earnings per
1828 ton mile on numerous other commodities, many of which may

be denominated low grade in their character, moved over the Union Pacific system from Portland and coast points to Omaha and other eastern terminals. In the opinion of witnesses produced by the carriers, including the freight traffic manager of the Union Pacific Railroad Company, this 50-cent rate is unreasonably low. From what has been said above it cannot be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases, but it is the finding and conclusion of the master that the evidence upon this branch of the cases is not so clear and conclusive under the rules above referred to as to justify a recommendation that an injunction be issued against that portion of these orders.

The same finding and conclusion is reached regarding the rates, generally to destinations on and west of the so-called Pembina–Port Arthur line. The master, therefore, recommends that the prayer for injunction against the orders of the defendant, disapproving the rates filed by the complainants to destinations on and west of the Pembina–Port Arthur line and requiring the restoration of the rates to these destinations in effect immediately prior to November 1, 1907, be denied.

In reaching its conclusion that the rates in question to Omaha and other points on the Pembina–Port Arthur line should be restored to the basis in effect just prior to November 1, 1907, it is to be presumed that the defendant acted under the authority delegated to it by the act to regulate commerce and the amendments thereto; it is to be presumed that thus acting under the delegated authority the defendant approved and established the pre-existing rates as just and reasonable for the service involved. In fact, an examination of the opinions and orders of the defendant in these cases clearly shows that such was the judgment of the defendant. As already seen,
1829 the defendant is without power to establish rates upon any other basis and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved the pre-existing scale of rates to this line was in the opinion of the defendant just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative, and we are, therefore, furnished in these cases by the defendant itself with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina–Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Commerce Commission v. Illinois Central Railroad Company et al. (supra) is not presented? Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per

hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant?

This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a greater distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable.

1830 In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distance may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines.

It is therefore not unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded.

It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seem to have been the result of competitive and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between Omaha

1831 and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves west-bound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in

the coast territory, as well as the Spokane territory, on the other, should normally be upon an equal basis.

Thus the commission said in the case above cited:

"There is no condition of construction or operation, or financial result, which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland, than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

While, as stated, it is true that this observation relates to west-bound traffic, and perhaps is not conclusive in considering this east-bound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the east-bound traffic to Omaha, as compared with the east-bound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration.

The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between
1832 these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike.

Before the commission in these proceedings, the complaining shippers urged that there should be equal rates upon this lumber traffic from the coast to St. Paul and to Omaha. These shippers urged that the 40-cent rate in effect to St. Paul and Minneapolis prior to November 1, 1907, should be applied to Omaha and the Missouri River territory generally, and it is fairly to be inferred that this position was taken in accordance with a conviction that conditions commercial, as well as otherwise, were so alike as to require equal rates.

From the deliberate conclusion, however, reached by the defendant that the 50-cent rate was just and reasonable upon this traffic to Omaha it is plain that the 40-cent rate asked by the shippers could not be.

Is it, therefore, possible in view of these various considerations to support the order of the defendant requiring the Northern Pacific and the Great Northern lines to withdraw the 50-cent rate made applicable by the tariffs of November 1, 1907, to St. Paul and common territory and to install instead a rate of 45 cents?

As its reasons for permitting an advance east of the Pembina–Port Arthur line, the defendant said in the so-called Washington case (No. 1329):

"To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton mile accruing to the carriers from this traffic."

The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pem-

1833 bina–Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina–Port Arthur line and as already shown traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which, under the commission's orders take the 45-cent rate, is generally greater than the average distance between points where under the commission's orders the 50-cent rate applies.

The revenue per ton mile, however, according to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50-cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seem to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50-cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina–Port Arthur line seem to it to be of sufficient weight to authorize
1834 their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable.

Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50-cent rate in and of itself is in anywise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate.

The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience in railroad traffic affairs, and these witnesses expressing their opinion and adding reasons therefor were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the preexisting rates, as well as the proposed rates and earnings therefrom,

with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results, while instructive as showing approximate or average results, are not sufficiently close to the
1835 mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars west-bound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded.

A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates approved by the commission to points on and west of the Pembina–Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line, and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina–Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported, and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders
1836 in so far as they displace the rates contained in the tariffs of November 1, 1907, to points east of the Pembina–Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the preexisting rate, should be set aside and enjoined.

By the effect of the orders of the defendant finding the rates to points east of the Pembina–Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations

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further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

A large amount of testimony appears in the record, much of which was before the defendant and some of which was added in the hearings before the master, relating to the circumstances and conditions under which the rates on lumber between St. Paul and similar points and Chicago and points on the Mississippi River, including St. Louis, have been in the past made and controlled. It is said, and seems amply supported by the proof, that the rate of 10 cents from St. Paul to Chicago is made in competition with carriers of lumber
1837 on the Great Lakes from Duluth to Chicago, and to some extent, so far as points on the Mississippi River are concerned, with carriers transporting lumber upon the Mississippi River. In the past it is probable that the lumber traffic on the Mississippi River had a larger effect upon the rates of the railroad lines competing therewith than at the present day, but from the history of the development of the lumber industry in the north is plain that the rail rates from northern points such as St. Paul and Duluth to Chicago and Mississippi Valley points to and including St. Louis, have always been and are to-day affected and held to a low basis by the various forms of water competition referred to. The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points cannot be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. The 60-cent rate estab-

lished in the tariffs on November 1, 1907, to Chicago applied
1838 via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the record to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha, would be unjust or unreasonable for the transportation of this traffic from Omaha to Chicago. Considering all of the facts relating to the character of the 10-cent rate above referred to in its application between St. Paul and Chicago for the distance involved and under the conditions disclosed in the record, it cannot be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can be sustained, and for the various reasons herinbefore referred to
1839 it is plain that this rate, whether applied via St. Paul or via Omaha, neither was nor is unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago.

There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions generally affecting rates to all such destinations; in fact in the orders of the defendant permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina–Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina–Port Arthur line other than as above indicated.

In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants and effective November 1, 1907, to points east of the so-called Pembina–Port Arthur line to be unjust and unreasonable cannot be approved; that the orders of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons cannot be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points
1840 east of the so-called Pembina–Port Arthur line to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof be set aside and annulled.

By the order in the so-called Potlatch case (No. 1346), which is one of the orders sought to be enjoined in these proceedings, the defendant fixed rates from points in eastern Washington, eastern Oregon, and Montana, to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907.

In the submission of testimony and in the arguments before the master, the questions presented by these cases have been considered principally with regard to the rate on fir lumber. That rate has been treated by both complainants and defendant as typical, and it has been so accepted and treated by the master in the foregoing findings. The relation between that rate and the rates on other lumber, shingles, and other forest products to points east of the Pembina-Port Arthur line was the same previous to November 1, 1907, and in the tariffs made effective on that date; and the orders of the
1841 commission left that relation unchanged. No question is made by either party as to the fairness of this relation. From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of the Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended.

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In accordance with the foregoing conclusions the master recommends the entry of decrees in each of the said cases in the form hereto attached.

FREDERICK N. DICKSON,
Special Master.

ST. PAUL, MINN., *Aug. 27, 1910.*

Entered. Filed August 27th, 1910. Henry D. Lang, clerk.

1842 United States Circuit Court for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and Oregon and California Railroad Company, *vs.* INTERSTATE COMMERCE COMMISSION.	Equity. No. 883.

This cause came on to be heard at this term and was argued by counsel; thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows:

That the order of the defendant in the proceeding brought before it entitled Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al., being I. C. C. No. 1327, dated June 3, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in the proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 28, 1908, and as further amended September 1, 1908; and the order of the defendant in the proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in the proceeding brought before it entitled Potlatch Lumber Company et al., v. Northern Pacific Railway Company
1843 et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, in so far as said orders, or any of them, require the complainants herein to cause and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorehead and Breckenridge, Minnesota;

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Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Missouri; and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
United States Circuit Judges.

1844 And thereafter on the same day the following report of rulings upon exceptions of complainants and defendant was filed in said cause, to wit:

1845 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 883.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

1846 By order of the court above named, entered therein on the 13th day of February, 1909, the above entitled causes were referred to the undersigned, as special master in chancery,

to take and report to said court the evidence, to examine the same, to make necessary computations, to find and state the facts in said causes, and to report advisory conclusions of law and recommend a proper form of decree therein.

Pursuant to said order, the testimony in said causes was taken and has been returned and filed in said court. And after hearing arguments of counsel, and on consideration, the undersigned, as such special master, did, on the 22nd day of July, 1910, pursuant to the terms of said order, exhibit to counsel his preliminary report and delivered to them copies thereof.

Thereupon, upon stipulation of the parties, it was ordered that said respective parties file with the undersigned on or before the 19th day of August, 1910, their objections and exceptions to said preliminary report, if any they had, and upon the 19th day of August, 1910, the defendant in said causes filed with the undersigned, exceptions, a true copy of which is hereto attached and marked "Exhibit A," and the complainants filed with the undersigned, exceptions, a true copy of which is hereto attached and marked "Exhibit B."

After hearing arguments of counsel and upon consideration, the master rules as follows upon said exceptions:

Defendant's exception No. 1 is overruled for the reason that the matter therein excepted to is fully covered in the specific finding of fact No. IV, and the suggested finding of fact is partial and unfair.

Defendant's exception No. 2 is overruled. The difference between the finding and the suggested finding is one of degree, and in the master's judgment the finding excepted to is amply sustained by the evidence.

Defendant's exception No. 3 is overruled. The suggested
1847 finding that at the time of the installation of the 40-cent rate it was not known whether there would be an empty east-bound car movement is not sustained by the evidence, and under the circumstances existing at that time is obviously untrue.

Defendant's exception No. 4 is allowed, and the master's report modified accordingly.

Defendant's exception No. 5 is allowed, and the master's report modified accordingly.

Defendant's exception No. 6 is overruled. The finding objected to is sustained by the evidence and the suggested finding is amply covered in other portions of the report.

Defendant's exception No. 7 is overruled, for the reason that it is not sustained by the evidence.

Defendant's exception No. 8 is overruled. The finding objected to is, in the master's judgment, amply sustained by the evidence, and the suggested finding that there is no satisfactory explanation of the sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound car mileage in the year ending June 1, 1907, is not true. In the master's judgment the explanation was ample.

Upon argument, the defendant withdrew exception No. 9, objecting to the recital of the testimony of R. I. Farrington. The finding suggested in exception No. 9 is refused as not being sustained by the evidence.

Defendant's exception No. 10 is refused, as not being sustained by the evidence.

Upon argument in reference to defendant's exceptions Nos. 11 and 12, it was agreed that the requirements of these exceptions would be met by inserting the percentages of dividends paid in recent years by the camplainants' roads and the master's report has been modified accordingly.

Defendant's exception No. 13 is overrruled. To say that the 50-cent rate involved was not established by the order of the commis-
1848 sion because it had theretofore been in effect, is a quibble. Upon the consideration of the case, it was the commission's duty to prescribe the maximum rate for the future, and they did prescribe this rate and thereby established it.

Defendant's exception No. 14 is overruled. The finding objected to is amply sustained by the evidence.

Defendant's exceptions Nos. 15 to 24, inclusive, are each and all of them exceptions to various findings of fact in the master's report, and are objected to on the ground that they are not sustained by the evidence, or are immaterial. Each and all of these exceptions are overruled by the master for the reason that in his judgment they are all amply sustained by the evidence and are material and relevant.

Defendant's requested finding of fact No. 1 is refused on the ground that it is not sustained by the evidence.

Defendant's second requested finding of fact is refused on the ground that it is not sustained by the evidence.

Defendant's third requested finding of fact is refused. The application of a 45-cent rate referred to in the second paragraph is not as stated in said paragraph and the requested finding is not sustained by the evidence.

The defendant's fourth requested finding of fact is refused on the ground that it is immaterial and does not support the conclusion therein arrived at.

Defendant's fifth requested finding of fact is refused on the ground that it is not sustained by the evidence. While the master has found that the general net returns of the carriers have been fairly satisfactory, and has also found that there is no evidence in the case tending to show that the rates charged upon lumber were confiscatory, he has also found that the rates charged upon lumber were very low rates. The finding herein amounts to an affirmative finding that the carriers have been receiving adequate compensation for
1849 their lumber traffic. In the master's judgment the evidence does not sustain such finding.

Defendant's sixth requested finding of fact is refused, because not sustained by the evidence.

Defendant's seventh requested finding of fact is refused. While some of the statements therein contained are true, the finding, as a whole, is immaterial.

Defendant's eighth requested finding of fact is refused as immaterial and already covered by the findings of fact. The master has expressly found that there is no evidence showing the relation and effect of the lumber rate upon the general body of net returns.

Defendant has filed 37 specific exceptions to the master's conclusions of law, numbered 1 to 37 inclusive, in which defendant takes exception to the conclusions which the master has arrived at in his report. All these various conclusions assailed by these exceptions are sufficiently explained in the master's report and said exceptions are each and all of them overruled for the reason stated in the report.

Exception No. 35 of the conclusions of law raises the question whether or not the court has the power to modify the commission's orders in the manner attempted in the decrees recommended herein, it being the contention of the defendant that the court has no power to do anything further than either to enjoin the commission's orders in toto, or sustain them in toto.

This exception is specifically overruled. The commission dealt with the rates in question in a twofold manner, dividing their application by the so-called Pembina–Port Arthur line and applying a different rule to the territory east and west of said line. If this is a justifiable basis of division, the court has a right to deal with the matter on such basis.

Referring to complainants' exceptions, exception 1 is par-
1850 tially allowed, and the master's report has been modified to the extent of limiting the period covered by said finding to a period beginning in the year 1901. Aside from this modification the exception is overruled.

Exception II is overruled. The master adheres to his original conclusions in this respect and thinks that the reasons for his position are sufficiently explained in his report.

Exception III is also overruled for the same reason.

Exception IV is also overruled for the same reason.

Exception V is also overruled for the same reason.

Exception VI is also overruled for the same reason.

Herewith the master files his final report of said causes, containing the modifications allowed hereinbefore.

Dated at St. Paul, Minn., this 27th day of August, 1910.

FREDERICK N. DICKSON,
Special Master in Chancery.

1851 EXHIBIT A.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company and Oregon, California Railroad Company, complainants, No. 883.

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon Railroad & Navigation Company, complainants, No. 884.

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company and Southern Pacific Company, complainants, No. 885.

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

Objections and exceptions taken by the above named defendant to the report of the special master herein, to whom these cases were referred to take proofs and report thereon.

CHARLES C. HOUPT,
United States Attorney,
LUTHER M. WALTER,
Special Assistant United States Atty.,
Solicitor for Defendant.

1852 Comes now the Interstate Commerce Commission, defendant in the above named cases, by its solicitors and objects to the report of Hon. Frederick M. Dickson, special master herein, and excepts to the findings of fact and conclusions of law hereinafter set out.

(1) For that the master erred in that part of his report, page 12, wherein he stated:

"For the purpose of providing loads for the east bound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul."

The master should have found substantially as follows:

"For the purpose of providing additional revenue and believing that 40 cents was reasonable compensation to begin with, the railroads installed the old 40-cent rate to St. Paul." (Rec., 1274, 1275.)

(2) For that the master erred in the following statement, page 12:

"The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry."

He should have found:

"The lumber industry in the coast district has grown to enormous proportions and has become a prosperous industry." (Rec., 1045, et seq.)

(3) For that the master erred in the statement of his finding of fact IV, page 15, wherein he stated:

"The superseded rates were made voluntarily by the carriers in 1893, avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads and more particularly and immediately for utilizing an east bound empty car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well defined east bound empty car movement from the coast."

The master should have found:

"The superseded rates were made voluntarily by the car-
1853 riers in 1893, as alleged at the hearing, for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads which would furnish adequate revenue under the circumstances. The 40-cent rate was first made by the Great Northern Railroad and was announced several months prior to the date when the railroad was opened for business from Seattle. At the time the 40-cent rate was established it was not known whether there would be an empty eastbound car movement." (Rec., 1274, 1275.)

(4) For that the master erred in line 11, page 17, wherein he used the word "mills." He should have used the word "materials:" (14 I. C. C., 4.)

(5) For that the master erred in failing to insert after the word "feet," in line 15, page 17, the following:

"Valued at the mills at $30,000,000.00." (14 I. C. C., 4.)

(6) For that the master erred in the finding, page 19, first paragraph:

"At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered

in arriving at the causes of the depression then existing in the lumber business."

The master should have found:

"Even before the financial depression was felt on the Pacific coast the lumber industry was greatly depressed and operations were largely decreased." (14 I. C. C., 7; Rec., 402.)

(7) For that the master erred in failing to insert after the word "cent," line 3, page 21, the following:

"At the time the 10-cent rate was established to St. Paul the empty car movement was not a fact to be considered in *in* making the rate." (Rec., 1274, 1275.)

(8) For that the master erred in his finding, beginning line 4, page 22, as follows:

"This sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound loaded car mileage in the year ended June 1, 1907, was, however, not normal, but due to tem-
1854 porary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months."

The master should have found:

"There is no satisfactory explanation of this sharp and sudden decrease in the percentage of east-bound loaded-car mileage over west-bound car mileage in the year ending June 1, 1907. The complainants, however, advance the theory that it was occasioned in a large degree by the carriage of supplies for the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, to storms, snowfall, and excessive cold weather in the winter of 1906 and 1907. There is no evidence as to the empty car movement or the movement of east or west bound loaded cars during the years ending June 1, 1908, and June 1, 1909; nor is there any evidence as to the cost of handling, or the revenue resulting from, handling the lumber traffic subject to the order complained of in these cases. The evidence to show these facts is all in the possession of the complainants." (14 I. C. C., 16, 33.)

(9) For that the master erred in the following finding, beginning line 2 from the bottom of page 22:

"This increase is fairly illustrated by the testimony of the witness, R. I. Farrington, relating to the cost of operation of the Great Northern Road. He testifies: 'Taking the year 1895 as 100 per cent, the cost per freight train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course, in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as 100 per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Conse-

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quently, it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895." (Equity Rule 76.)

The master should have found instead thereof:

"While the cost of operation has constantly increased, the economy of operation has kept pace therewith. The minimum
1855 carload of lumber has greatly increased, engines haul much heavier trains, roadbeds have been improved, so that the cost of hauling a single unit compared with the revenue therefrom is much less than in 1893." (Rec., 754, 761.)

(10) For that the master erred, finding XV, page 23, line 20, in failing to insert after the word "industry" the following: "and other traffic." (Rec.., 1441.)

(11) For that the master erred, finding XVI, page 23, in inserting in the last line on said page the word "Fairly."

(12) For that the master erred in inserting the word "fairly," line 3, page 24.

(13) For that the master erred in finding XVII, page 24:

"By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was established."

That finding should have been:

"By this order the rate of 50 cents per one hundred pounds, previously and for many years in effect, over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was not disturbed." (14 I. C. C., 1 et seq.)

(14) For that the master erred in the finding, line 19, page 24:

"And that such revenue is far below the average revenue per ton mile on any of the complainants' roads, and that this 50-cent rate over this system to Omaha is a very low rate."

(15) For that the master erred in the finding, line 25, page 24:

"Omaha and St. Paul are on a parity as bases of through rates, and are so considered by the commission and by rate experts." (See commission's decision in Spokane v. Northern Pacific Railway Company, decided June 7, 1910, 19 I. C. C., 162.)

(16) For that the master erred in the finding, beginning last line, page 24:

"This rate will undoubtedly result in a revenue to the
1856 northern lines measurably less than the revenue yielded to the Union Pacific line by the 50 cent rate to Omaha."

(17) For that the master erred in inserting in line 25, page 25, the following:

"While it is probable that."

(18) For that the master erred in his finding, beginning line 1, page 26:

"It is sufficient to say, that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved

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and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results reached are not widely apart from those reached by the engineers of the railroad companies." Rec., 781 et seq.

The finding is upon a matter wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

(19) For that the master erred in inserting in line 24, page 26:

"And in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures."

(20) For that the master erred in his finding, last paragraph, page 26:

"Of the method made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved."

The finding is upon a mat'er wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

(21) For that the master erred in the following finding, page 27, third paragraph:

1857 "In the conclusion at which the master has arrived, it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds."

This finding is not supported by the evidence in the record.

(22) For that the master erred in inserting the word "fair" in line 25, page 28.

(23) For that the master erred in the following finding, last line, page 28:

"Upon the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case, the results from operation of either of these companies were in any degree excessive." (Rec., 646, 647; 14 I. C. C., 7.)

(24) For that the master erred in the following finding, line 5, page 29:

"On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames (169 U. S., 522) and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions."

There is no evidence of original cost of construction, amount expended in permanent improvements, present cost of construction compared with original cost of construction, the probable earnings upon the rates complained of, or operating expenses probable during life of order.

1858 REQUESTED FINDING OF FACT.

The defendant objects and excepts to the failure of the special master herein to make each and every of the following findings of fact:

1. The rates provided for in the schedules to become effective November 1, 1907, were enjoined by the Circuit Court of the United States, having jurisdiction, and the same were never collected by the complainants herein. Shippers of lumber continued to pay the rates in effect prior to November 1, 1907, and no part of the revenues of the carriers were due to the increase in lumber rates provided for in November 1, 1907. (Complainant's brief, 3.)

2. The net returns per mile of railroad for each of complainants was much greater at the time of the hearing before the commission than they were ten years before. Freight-car capacities had greatly increased, much larger train tonnage was hauled, train crews handled much more tonnage, engine capacity had greatly increased and much more than kept pace with the increased cost of labor or of construction. (Rec., 754, 761.)

3. The 50-cent lumber rate over the Union Pacific Railroad covers as a blanket rate all points from Medford, Oregon, 350 miles south of Portland, to Cascade Locks, 45 miles east of Portland, the center of origin being 152 miles south of Portland; this rate covers as blanket rate all destination points from Brule, Nebraska, 350 miles west of Omaha, to Omaha, the center of destination being 175 miles west of Omaha. The distance from the center of origin to center of destination is 1,676 miles. The per ton mile rate for the average distance is 5.96 mills.

The 45-cent lumber rate over the Northern Pacific covers as a blanket rate all points of origin from South Bend, Wash-
1859 ington, to , 143 miles east of Tacoma, the center of origin being 16 miles east of Tacoma; this rate covers as a blanket all points of destination from Glendive, Montana, 676 miles west of St. Paul, to St. Paul, the center of destination being 338 miles west of St. Paul. The distance from center of origin to center of destination being 1,558 miles. The per ton mile rate is 5.78 mills. (Rec., 938, 1443.)

On all shipments to Chicago via Omaha upon which the rate is 55 cents, the Union Pacific receives for its haul only 45 cents. On all shipments to Chicago via St. Paul on which the 55-cent rate applied, the Hill lines received for the haul to St. Paul 45 cents.

4. Rates have been voluntarily put into effect and are now in effect from Spokane to Winnipeg over the Northern Pacific and the

Canadian Northern and the Great Northern and the Canadian Northern of 37 cents per one hundred. Via the Northern Pacific the distance is 1,545 miles. Via the Great Northern, 1,356. From Bellingham, Washington, via the Northern Pacific, to Winnipeg the distance is 2,094.3 miles, and the rate is 40 cents per one hundred pounds, out of which three cents is paid to the local road from Bellingham to Sumas Junction, 23.3 miles, leaving 37 cents to be divided between the Northern Pacific and Canadian Northern for 2,071 miles. The same condition prevails from points on the Tacoma and Eastern to Winnipeg, where out of a rate of 40 cents for a haul of 1,491 miles the Northern Pacific received as its share 36 cents. From Kendall, Washington, the rate via the Northern Pacific or Great Northern and Bellingham Bay and British Columbia Railroad the first-named carrier receives out of 40 cents, 37½ cents for a haul of 2,071 miles over the Northern Pacific, and 1,817 miles over the Great Northern. (See defendant's brief, 272.) When these rates and distances are compared with a haul of 1,564 miles to Jamestown,
North Dakota, on the Northern Pacific, and 1,896 miles to Min-
1860 neapolis over the same road, and with substantially similar
distances over the Great Northern upon which a rate of 45 cents has been prescribed by the commission, it would appear that the 45-cent rate is a very liberal rate for the carriers.

5. From a careful examination of all the evidence, I find nothing of any importance showing, or tending to show, that the complainants herein are not receiving adequate compensation for the services which they rendered the public. Any injunction against the order of the commission will operate to increase the revenue of the complainants beyond anything they have yet received upon lumber traffic. No statement is made by complainants or any of their witnesses that if an injunction is granted, thereby increasing the revenue of the carriers, there will be any reduction on any other commodities or any class of traffic. Nothing save opinion evidence is given upon the question of remuneration of the particular rates here under investigation. The commission pre-cribed 45 cents as a reasonable rate for the haul to St. Paul and Minneapolis. Measured by this standard and by the rates charged upon lumber over the lines of these complainants and of other carriers, the rates prescribed by the commission in no sense are less than the carriers are entitled to.

6. The evidence does not disclose whether the conditions and circumstances surrounding the movement of traffic from the Pacific coast to Omaha are similar or dissimilar to those appertaining to the haul from Pacific coast points to St. Paul and Minneapolis, except the elevation is much greater over the Union Pacific than over the Great Northern and Northern Pacific. (Rec., 1023.)

7. The record fails to disclose the amount of the tonnage subject to the commission's order which is hauled by complainants. It does appear that during the year ending June 30, 1907, of the whole
amount of tonnage hauled by the complainants, products of
1861 the forest constituted on the Union Pacific 7.86 per cent, on the Northern Pacific 37.38 per cent, on the Great Northern

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14.8 per cent. How much of this percentage is carried at rates prescribed by the commission does not appear. These percentages cover both State and interstate east-bound and west-bound movement. The commission's order applies only to interstate east bound. (14 I. C. C., 16.)

8. Lumber is a low-grade commodity, is loaded and unloaded by the shipper, requires but little service, loads far beyond the average per car, and upon the whole is very desirable traffic. I find no evidence which shows or tends to show other than mere opinions of interested parties that lumber subject to the orders herein does not pay its fair proportion of the income which the complainants have or should have.

CONCLUSIONS OF LAW.

Defendant objects and excepts to the following conclusions of law made by the special master herein:

(1) For that the master erred in the 9th conclusion, page 31, wherein he stated the law as follows:

"An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted."

(2) For that the master erred in overruling each and every objection entered by defendant to the admission of evidence as shown on pages 39, 40, and 41 of volume 1 of the printed record herein.

(3) For that the master erred in holding, line 18, page 42:

"That the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy."

1862 (4) For that the master erred in holding, line 18, page 45:

"It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations, a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws."

(5) For that the master erred in holding, line 1, page 47, that there does inhere in the Federal courts of equity power to review rates made by the commission to determine "whether or not the delegated power has been exercised in a just and r'asonable manner."

(6) For that the master erred in reaching the following conc'usions, paragraph 3, page 49:

"It does, however, appear that they are very low rates and unusually favorable to the shippers and to the public."

(7) For that the master erred in reaching the following conclusion, paragraph 4, page 49:

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"In restoring the superseded rates to the Pembina–Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point."

(8) For that the master erred in reaching the following conclusion, paragraph 5, page 49:

"If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates."

(9) For that the master erred in reaching the following conclusion, paragraph 6, page 49:

"The difficulties and expenses of transportation over the Union Pacific line and the Northern lines are fairly equal. The route over the Northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates."

1863 (10) For that the master erred in reaching the following conclusion, paragraph 7, pags 49:

"The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable."

(11) For that the master erred in reaching the following conclusion, paragraph 8, page 49:

"If then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities."

(12) For that the master erred in reaching the following conclusion, line 7, page 50:

"It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbi-

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tarary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised."

(13) For that the master erred in reaching the following conclusion, line 22, page 50:

"These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5 cents per one hundred pounds differential to Chicago while the northern lines are allowed 10 cents. And the 10-cent rate from St. Paul to Chicago is and always must be an exceeding low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order."

(14) For that the master erred in the following conclusion, line 16, page 52:

"Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low."

(15) For that the master erred in reaching the following conclusion, line 6, page 53:

"From what has been said above, it cannot be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases."

(16) For that the master erred in reaching the following conclusion, beginning last line, page 53:

"As already seen, the defendant is without power to establish rates upon any other basis and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved, the preexisting scale of rates to this line was, in the opinion of the defendant, just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative and we are therefore furnished in these cases, by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina–Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Com-

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merce Commission v. Illinois Central Railroad Company et al., supra, is not presented? Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant?"

(17) For that the master erred in reaching the following conclusion, beginning line 27, page 54:

"This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a great distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable."

(18) For that the master erred in reaching the following conclusion, beginning first line, page 55:

"In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distances may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from Astoria to
1866 St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines."

(19) For that the master erred in reaching the following conclusion, beginning 20th line, page 55:

"It is not, therefore, unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded."

(20) For that the master erred in reaching the following conclusion, line 23, page 55:

"It will be recalled that prior to the reduction in 1893, by the Great Northern, the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific Northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive

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and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between Omaha and St. Paul, on the one hand, and the coast territory, on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha, on the one hand, and points in the coast territory, as well as the Spokane territory, on the other, should nominally be upon an equal basis.

Thus the commission said in the case above cited:

"There is no condition of construction or operation or financial result which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

1867 (21) For that the master erred in reaching the following conclusion, line 21, page 56:

"While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the east-bound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration."

(22) For that the master erred in reaching the following conclusion, line 29, page 56:

"The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike."

(23) For that the master erred in reaching the following conclusion, line 22, page 57:

"As its reasons for permitting an advance east of the Pembina–Port Arthur line, the defendant said in the so-called Washington case (No. 1329):

"'To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton-mile accruing to the carriers from this traffic.'"

(24) For that the master erred in reaching the following conclusion, line 29, page 57:

"The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred

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pounds was the longer haul involved to points east of the Pembina–Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina–Port Arthur line and, as already shown, traffic to these points from the coast territories probably involves, on the average, substantially longer hauls than to Omaha; certainly traffic to the northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which,
1868 under the commission's orders, take the 45-cent rate is generally greater than the average distance between points where under the commission's orders the 50-cent rate applies."

(25) For that the master erred in reaching the following conclusion, line 11, page 58:

"The revenue per ton-mile, however, accruing to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton-mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton-mile on traffic from Portland to St. Paul, as shown by the record, was 3.90 mills, and under the 50-cent rate contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton-mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton-mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seems to clearly demonstrate that the revenue per ton-mile earned by the carriers transporting this traffic to St. Paul and common points, even under the 50-cent rate, would be substantially less than the revenue per ton-mile accruing to carriers in the traffic to Omaha, and therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina–Port Arthur line seem to it to be of sufficient weight to authorize their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable."

(26) For that the master erred in reaching the following conclusion, line 4, page 59:

"Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court, upon the whole record before it, to determine whether the 50-cent rate in and of itself is in any wise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate."

1869 (27) For that the master erred in reaching the following conclusion, line 12, page 59:

"The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience

in railroad traffic affairs, and these witnesses, expressing their opinion and adding reasons therefor, were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered, in addition, numerous exhibits comparing the pre-existing rates, as well as the proposed rates and earnings therefrom, with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber, based both upon earnings per ton-mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results, while instructive as showing approximate or average results, are not sufficiently close to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars west bound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded."

(28) For that the master erred in reaching the following conclusion, line 12, page 60:

"A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by the complain-
1870 ants. The effect which, under the authorities, must be given to the conclusions of the defendant has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify, in the opinion of the master, an injunction against the rates approved by the commission to points on and west of the Pembina–Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master, upon the entire record, that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina–Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders, in so far as they displace the rates contained in the tariffs of Novem-

ber 1, 1907, to points east of the Pembina–Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the preexisting rate, should be set aside and enjoined."

(29) For that the master erred in reaching the following conclusion, line 6, page 61:

"By the effect of the orders of the defendant finding the rates to points east of the Pembina–Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the Coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents fixed in said tariffs to St. Paul a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

1871 (30) For that the master erred in reaching the following conclusion, line 12, page 62:

"The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton-mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points can not be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. This 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all

or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents, whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the records to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha, would be unjust or unreasonable for the
1872 transportati'n of this traffic from Omaha to Chicago. Considering all the facts relating to the character of the 10-cent rate above referred to, in its application between St. Paul and Chicago, for the distance involved and under the conditions disposed in the record, it can not be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha, the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can be sustained, and for the various reasons hereinbefore referred to it is plain that this rate, whether applied via St. Paul or via Omaha, neither was, nor is, unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago."

(31) For that the master erred in reaching the following conclusion, line 6, page 64:

"There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions, generally, affecting rates to all such destinations; in fact in the orders of the defendants permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina-Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair, and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina-Port Arthur line other than as above indicated."

(32) For that the master erred in reaching the following conclusion, line 19, page 64:

"In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants and effective November 1, 1907, to points east of the so-called Pembina-Port Arthur line, to be un-

just and unreasonable can not be approved; that the orders
1873 of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons can not be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points east of the so-called Pembina-Port Arthur line, to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof, be set aside and annulled."

(33) For that the master erred in reaching the following conclusion, line 4, page 65:

"By the order in the so-called Potlatch case (No. 1348), which is one of the orders sought to be enjoined in these proceedings, the defendants fixed rates from points in eastern Washington, eastern Oregon and Montana, to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907."

(34) For that the master erred in reaching the following conclusion, line 2, page 66:

"From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of the Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended."

1874 (35) Defendant objects and excepts to the proposed decree of injunction for that the same is a modification of the commission's order, while the statute does not confer upon the court power to act other than upon the order as a whole by enjoining, suspending, or sustaining the same in toto.

(36) For that the master erred in recommending entries of decrees of injunction in each of the said cases in the form used in said report.

(37) For that the master erred in failing to recommend decrees dismissing the bills of complainant in each of the said causes.

Wherefore, defendant by its solicitors respectfully prays that in all of which particulars herein set out the report be varied and altered so as to conform to the facts and the law applicable thereto.

LUTHER M. WALTER,
CHARLES C. HOUPT,
Solicitors for Defendant.

J. N. TEAL,
W. A. WIMBISH,
Of Counsel.

(Endorsed:) Filed August 27th, 1910. Henry D. Lang, clerk.

1875 EXHIBIT B.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 883.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 884.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 885.

Complainants' exceptions to master's report.

Come now the complainants and make the following exceptions to the report of the master dated July 22, 1910:

I.

They except to that finding and conclusion of the master, appearing on page 13 of the report as printed, reading as follows:

"It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements, and in addition thereto have accumulated large surplus funds."

And to that finding and conclusion of the master, appear-
1876 ing on pages 23 and 24 of the printed report, reading as follows:

"During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surpluses, and clearly appear to have been on the whole prosperous and to have earned fairly satisfactory net incomes from their transportation."

upon the ground that it appears from the testimony that the earnings of the Northern Pacific Railway Company and of the Great Northern Railway Company during the periods referred to in said findings have not yielded a fair return upon the fair value of the property of said companies devoted to railroad uses. The evidence further shows that the properties of the Northern Pacific Company were in an insolvent condition and in the hands of receivers during a portion of the time down to the year 1896, and that the properties of the Union Pacific system were likewise insolvent and in receivers' hands during a portion of the time down to the year 1898.

The evidence showing the cost of reproduction of the Great Northern Railroad system contained in complainants' Exhibit 15, Hogeland, page 435, printed transcript of record, the evidence showing the value of the Great Northern system computed upon average market price of stocks and bonds for the period of five years ended June 30, 1908, introduced in evidence under stipulation and printed in complainants' reply brief, page 51, and complainants' Exhibit A, Great Northern, at pages 653 to 664, inclusive, of printed transcript of record, showing gross earnings, operating expenses, taxes, net earnings and net income from operation, show that the net earnings upon the fair value of the properties of that company for the years 1904 to 1908, both inclusive, to have been less than a fair return upon the value of such properties.

1877 The findings of the cost of reproduction of the Northern Pacific Railway Company, appearing in complainants' Exhibit 4, pages 116 to 135 of record, and the findings of the value of the property computed upon the basis of the average market value of bonds and stocks of said company for a period of five years, introduced in evidence by stipulation and printed on page 52 of complainants' reply brief, and the findings as to the earnings of said property during the entire period from its reorganization in 1896 down to and including the fiscal year 1909, appearing in complainants' Exhibit 22, page 595 of printed transcript of record, showing that the earnings from said property during the said period had not yielded a fair return upon the fair value thereof.

II.

They except to that finding and conclusion of the master, appearing on page 14 of the printed copy of the report, reading as follows:

"The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them we think this evidence so remote and speculative as to be absolutely immaterial in this case."

And further except to paragraphs 5 and 6 of the conclusions of law upon page 30 of the printed copy of the report reading as follows:

"(5) But where the question under consideration is the just-
1878 ness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate."

for the reason that the master erred as a matter of law in holding that the evidence of the cost of reproduction of the Northern Pacific and Great Northern systems is so remote and speculative as bearing upon the particular rate as to be immaterial. The master erred in holding that upon the evidence thus introduced a finding based thereon would be merely a guess. The master erred in holding that the cost of reproduction of said properties was so remote and speculative as to be immaterial in determining the ultimate fact of the real value of said properties.

III.

They except to that finding and conclusion of the master, appearing on page 21 of the printed copy of the report, reading as follows:

"Ever since 1903 the condition in respect to the predominance of empty-car mileage has been changing until in 1907 the west-bound empty-car movement greatly predominated over the east-bound empty-car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the west to the consuming markets of the east."

for the reason that, as shown in Great Northern Exhibit 27, page 613, and Maguire Exhibit 3, page 1485, and in Northern Pacific Exhibit 25, at page 604, all in the printed transcript of record, it ap-
1879 pears that almost the entire volume of east-bound tonnage consisted of lumber and shingles during the year 1907.

IV.

They except to those findings and conclusions of the master, appearing on page 30 of the printed copy of the report, reading as follows:

"(2) The Constitution guarantees just compensation for private property devoted to a public use, and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation cannot be predicated upon it."

and to those findings and conclusions of the master, appearing on pages 42 and 43 of the printed copy of the report, reading as follows:

"In other words, confiscation cannot be predicated upon a single rate in and of itself, particularly because it is impossible to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns."

And to that finding and conclusion of the master, appearing on page 44 of the printed copy of the report, reading as follows:

"It seems clear, therefore, that in cases involving a single rate,
1880 such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out."

upon the ground that the master erred as a matter of law in finding and holding that a carrier is only entitled under the Constitution and the act to regulate commerce to just compensation for the entire use of all its property, and that a particular rate need not in and of itself furnish just compensation for the particular service rendered; and further erred as a matter of law in holding that confiscation under the provisions of the Constitution cannot be predicated upon a single

rate unless the reduction in that rate so affects the general body of net returns as to reduce the net returns as a whole below what is just and reasonable, for the reason that under the provisions of the Constitution and the limitations of power upon the Interstate Commerce Commission, as contained in the act to regulate commerce, the commission is without power to establish any rate or rates for transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all the circumstances relating to that service is just and reasonable.

V.

They except to that finding and conclusion, appearing on page 44 of the printed copy of the report, reading as follows:

"The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that, in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost."

1881 And to that finding and conclusion, appearing on page 49 of the printed copy of the report, reading as follows:

"There is not evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations."

for the reason that complainants have not conceded that the rates on lumber fixed by the orders of the commission involved herein were not confiscatory, and for the further reason that there is ample evidence in the record from which it clearly and persuasively appears that the rates fixed by the orders of the commission in controversy here are confiscatory. The evidence of the witness James J. Hill, at pages 1267, 1276, 1278, 1280, 1288, 1294, and 1298 in the printed transcript of the record; the evidence of the witness Howard Elliott, at pages 1372 to 1374, inclusive, therein; the evidence of the witness J. G. Woodworth, at pages 3883 to 3891, inclusive, therein; the evidence of the witness James A. Munroe, at page 306 and at pages 352, 364, 365; the evidence of the witness J. G. Woodworth, at page 1475; the evidence of Dwight C. Morgan, at pages 800, 863; Woodworth Exhibit 1, page 1443; Woodworth Exhibit 2, page 1447; Maguire Exhibit 3, page 1485; R. B. Miller Exhibit 2, page 1500; Miller's statement, page 1512; Union Pacific statement, page 353; evidence of the witness R. I. Farrington, page 1602 and following, and evidence of witness James J. Hill, page 1280, clearly shows that the rates fixed by the orders of the commission complained of herein are confiscatory.

VI.

The complainants further except to the finding and conclusion of the master denying the prayer for an injunction against the orders

of the commission disapproving the rates filed by the carriers in their tariffs of November 1, 1907, to points on and west of the so-
1882 called Pembina–Port Arthur line and in lieu thereof requiring the restoration of the rates previously in effect to points on and west of said line, for the reason in exception Number V that the evidence conclusively shows that the rates established by the carriers in the tariffs of November 1, 1907, to points on and west of said Pembina–Port Arthur line were neither unjust nor unreasonable, and conclusively shows that the rates ordered restored by the orders herein complained of were and are unjust, unreasonable, and confiscatory.

The complainants therefore pray that the report in the matters hereinbefore excepted to be modified and made to conform to the law and the proof contained in the record.

HALE HOLDEN,
F. C. DILLARD,
H. A. SCANDRETT, and
CHARLES DONNELLY,
Solicitors for Complainants.

(Endorsed:) Filed August 27, 1910. Henry D. Lang, clerk.
(Endorsed:) Report of rulings upon exceptions of complainants and defendant. Filed August 27th, 1910. Henry D. Lang, clerk.

1883 Thereafter and on the same day the following order noting the filing of the master's report was entered in said cause, to wit:

1884 United States Circuit Court, District of Minnesota, Third Division.

Chancery rule and order book.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} No. 883. Equity.

1910. Aug. 27th.

And now comes Frederick N. Dickson, the duly appointed special master in chancery in the above-entitled cause, and filed his report in the clerk's office of said court under an order appointing him special master in chancery, which said filing is hereby entered and noted.

(Entered C. R. "C," page 208.)

And thereafter, on September 15th, 1910, the following record of hearing upon the exceptions to master's report was entered of record in said cause, to wit:

1885 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes: June term, A. D. 1910. September 15, 1910.

Thursday morning: Court opened pursuant to adjournment. Present: Hon. Walter H. Sanborn, Hon. Willis Van Devanter, Hon. William C. Hook, circuit judges; Henry D. Lang, clerk.

UNION PACIFIC RY. CO.; OREGON SHORT LINE R. R. CO.; Oregon R. R. & Navigation Co.; Southern Pacific Co.; Northern Pacific Ry. Co.; Great Northern Ry. Co.; Chicago, Burlington & Quincy R. R. Co.; and Oregon & California R. R. Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 883. Equity.
NORTHERN PACIFIC RY. CO.; GREAT NORTHERN Ry. Co.; Chicago, Burlington & Quincy R. R. Co.; Union Pacific R. R. Co.; Oregon Short Line R. R. Co.; and Oregon R. R. & Navigation Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 884. Equity.
GREAT NORTHERN RY. CO.; NORTHERN PACIFIC Ry. Co.; Chicago, Burlington & Quincy R. R. Co.; Union Pacific R. R. Co.; Oregon Short Line R. R. Co.; Oregon R. R. & Navigation Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

This day come the parties to these causes by their respective solicitors, Mr. Hale Holden appearing on behalf of the complainants and Messrs. Luther M. Walter, J. N. Teal, and W. A. Wimbish appearing on behalf of the defendant, and the said cause having been heretofore, by order duly made and entered, set down for hearing at this time and place, upon the exceptions of the complain-

ants and defendant to the special master in chancery's report
1886 herein, the same now coming on.

Mr. Hale Holden opens and argues the said exceptions on behalf of the complainants.

Mr. Luther M. Walter opens, stated, and argues the exceptions on behalf of the defendant.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. Luther M. Walter resumes and concludes his argument upon said exceptions on behalf of the defendant.

Mr. W. A. Wimbish argues upon the said exceptions on behalf of the defendant.

Mr. J. N. Teal argues in conclusion upon said exceptions on behalf of the defendant.

Mr. Hale Holden argues in reply and conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties hereto upon said exceptions to the special master's report the same are duly submitted to and by the court taken under advisement.

Ordered, That this court do now adjourn until to-morrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

Thereafter, and on October 1st, 1910, the following exceptions of defendant to master's final report was filed in said cause, to wit:

1887 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY; OREGON SHORT LINE Railroad Company; Oregon Railroad & Navigation Company; Southern Pacific Railway Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN Railway Company; Chicago, Burlington & Quincy Railroad Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 884.

GREAT NORTHERN RAILWAY COMPANY; NORTHERN PACIFIC Railway Company; Chicago, Burlington & Quincy Railroad Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

Exceptions of defendant to master's final report.

Charles C. Houpt, United States attorney; Luther M. Walter, special assistant United States attorney; J. N. Teal, W. A. Wimbish, of counsel.

Now comes defendant Interstate Commerce Commission, by its solicitors, and excepts to the final report of the special master filed herein on the 27th day of August, 1910, upon each and every ground set out in the objections and exceptions of this defendant filed with the master on the 17th day of August, 1910, set out in Exhibit
1888 A accompanying the printed report of the master at pages 73 and 96, both inclusive.

In further support of said exceptions so presented to and filed with the master, this defendant respectfully submits the following:

(a) Referring to exception No. 3 (pp. 74, 75 of the master's report), the master should have found and declared that the 40-cent rate to St. Paul was established by the Great Northern Railway Company, upon its completion to the coast in 1893, for the purpose of securing traffic and because it was believed and declared by the officials of the said railway company that this rate was reasonable and just and would afford the carrier fair remuneration for the services rendered; and the fact that there was or probably would be an empty east-bound movement of cars was not considered or offered as a reason for making the rate. (Trans., pp. 1274–75.)

The master should have further found that the Northern Pacific Railway Company joined in this rate because it was forced to do so by competition, and not because of the existence of an east-bound empty-car movement.

(b) Referring to exception No. 14 (p. 77 of the master's report), the master should have found and declared that while the rate per ton-mile for the haul of lumber from coast points to Omaha, under the 50-cent rate, was less than the average rate per ton-mile on all traffic of the complainant roads, it afforded full compensation for the service performed, and was not out of line with the rates upon other traffic, in view of the length of haul, the volume of the movement, and the character of the commodity.

(c) Referring to exception 15 (p. 77 of the master's report), the master should have found and declared that Omaha and St. Paul are not on a parity as bases for the rates for the haul of lumber from
1889 Pacific coast points; that many years ago the carriers estab-

lished a differential of 20 cents a hundred pounds as between Omaha and St. Paul because of the greater market competition at St. Paul, which was then the center of a large lumber-producing region; that as this competition relaxed the differential was decreased, until, under the tariffs of November 1, 1907, it was made 5 cents a hundred pounds; that the Interstate Commerce Commission, in its report and order, did not disturb but recognized and retained this differential in the rates prescribed; and that the difference in market competition existing at St. Paul justified the carriers in fixing the differential of 5 cents under Omaha.

The defendant prays that the said exceptions be sustained by the court; that the findings and conclusions of the master excepted to be reversed; and that the original and amended bills of the complainants in said causes be dismissed.

CHARLES C. HOUPT,
United States Attorney.
JOEL M. DICKEY,
Assistant United States Attorney.

(Endorsed:) Defendant's exceptions to master's report. Filed October 1st, 1910. Henry D. Lang, clerk.

And thereafter on the same day the following order fixing compensation of the master was filed in said cause, to wit:

1890 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railroad Company, Great Northern Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885.

1891 By order of this court made one in each of the above-entitled causes, on the 13th day of February, 1909, Frederick N. Dickson, of St. Paul, Minnesota, was appointed special master in chancery, in each of said causes, and empowered and directed to take and report to the court the evidence therein; to examine the same; to make all necessary computations; to find and state the facts in said causes; and to report advisory conclusions of law and recommend a proper form of decree herein.

And the said master having heard said causes, the same having been tried before him together, and having on the 22nd day of July, 1910, served upon the respective parties to said causes a preliminary report of his conclusions and recommendations therein, and having on the 19th day of August, 1910, heard and considered the exceptions of the respective parties to said causes to said report and recommendations, and having thereafter, on the 27th day of August, 1910, filed his final report of said causes and recommendations therein.

Now, upon consideration, it is ordered, That the compensation of said special master for his services in said three causes (including $200.00 expense sustained by him) be, and it is hereby, fixed and allowed at the sum of four thousand ($4,000.00) dollars, to be distributed pro rata between said causes.

Dated this 28th day of September, 1910.

WALTER H. SANBORN,
Circuit Judge.

Filed October 1st, 1910. Henry D. Lang, clerk.

1892 Thereafter and on October 10th the following decision overruling exceptions to master's report was filed and entered in said cause, to wit:

1893 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington & Quincy Railroad Co., and Oregon and California Railroad Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883. Equity.

NORTHERN PACIFIC RAILWAY CO., GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., and Oregon Railroad and Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.	Equity.
GREAT NORTHERN RAILWAY CO., NORTHERN PACIFIC Railway Co., Chicago, Burlington & Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., and Southern Pacific Co., Complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.	Equity.

All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty-cent rate on lumber to St. Paul and other points east of the Pembina line was arbitrary, so palpably unjust and unreasonable, and so discriminatory that it was beyond the power of the commission are overruled on the ground that this action of the commission was beyond its power or so palpably and gravely unjust and unreasonable as to be beyond the substance, if not beyond the form, of its power and upon the authority of

Interstate Commerce Com. vs. Ill. Cent. R. R. Co. (30 Sup. Ct. Rep., 155); C., M. & St. P. Ry. Co. vs. Minnesota (134 U. S., 1894 418–452–456–457); Mo., Kansas Texas R. R. Co. et al. vs. I. C. C. (164 Fed., 645); F. H. Peavey & Co. vs. U. P. Ry. Co. (176 Fed., 409–418–422).

Let orders, therefore, be entered overruling the exceptions to the special master's report and let the proposed decrees be entered.

(Endorsed:) Decision overruling exceptions and direction decrees to be entered. Filed Oct. 10, 1910. Henry D. Lang, clerk.

And thereafter on the same day the following order overruling exceptions to master's report and directing decrees to be entered was filed and entered of record in said cause, to wit:

1895 United States Circuit Court for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, *vs.* INTERSTATE COMMERCE COMMISSION.	Equity. No. 883.

Whereas an order was duly entered herein on the 30th day of July, A. D. 1910, setting the exceptions of the complainants and defendant to the report of the special master in chancery, and the form of decree recommended and proposed by him, which said report and proposed decree were duly filed herein on the 27th day of August, A. D. 1910, down for hearing on the 15th day of September, A. D. 1910, and the same having been on that day duly heard, argued, and submitted to and by the court taken under advisement.

Now, after due consideration thereof, it is by the court ordered, adjudged, and decreed, That all of the exceptions of the complainants and defendant and of each of them be, and they hereby are, overruled. And it is further ordered, That the report of the special master in chancery as filed herein be, and the same hereby is, in all things approved and confirmed, and that the decree recommended by the said special master be, and the same hereby is, approved and accordingly that the same be entered.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
U. S. Circuit Judges.

(Endorsed:) Filed October 1st, 1910. Henry D. Lang, clerk.

1896 Thereafter and on the 13th day of October the following decree was filed and entered of record in said cause, to wit:

1897 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY; OREGON SHORT LINE Railroad Company; Oregon Railroad & Navigation Company; Southern Pacific Railway Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.

This cause came on to be heard at this term and was argued by counsel; thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in the proceeding brought before it entitled Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al., being I. C. C. No. 1324, dated June 3, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in the proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 28, 1908, and as further amended September 1, 1908; and the order of the defendant in the proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in the proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific
1898 Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, in so far as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota, Moorhead and Breckenridge, Minnesota, Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Missouri, and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
United States Circuit Judges.

(Endorsed:) Filed October 15th, 1910. Henry D. Lang, clerk.

Thereafter and on October 17th, 1910, the following stipulation for taxation of costs was filed in said cause, to wit:

1899 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION. } No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885.

Stipulation.

It is stipulated that the following items of disbursements made by the complainants in the above entitled causes were disbursements necessarily made therein and that they may be taxed as costs in favor of said complainants, the amounts named below to be apportioned pro rata between said causes, or, in other words, one-third to each cause:

1900	1908.	
	Dec. 17. Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for serving chancery subpœna	3.00
	1909.	
	Nov. 6. Paid Robt. S. Taylor, Saint Paul, for record of testimony and proceedings	1,413.00
	Jan. 18. Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for additional deposit	10.00
	1910.	
	April 15. Paid Gunthrop-Warren Printing Company, for printing record	2,948.00
	Mar. 1. Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for additional deposit	30.00
	Aug. 6. Paid Review Publishing Company, Saint Paul, for printing master's report	50.25

Sept. 3.	Paid Gunthrop-Warren Printing Company for reprint of master's report, with exceptions and rulings thereon	94.50
Oct. 7.	Paid Frederick N. Dickson, special master, compensation for his services, as per agreement of parties and order of court	4,000.00
	Total	$8,548.75
	To fees of H. Lee, crier, Chicago, 8 days at $2.50 per day, as per stipulation filed Mar. 11, 1910	20.00
		8,568.76

F. C. DILLARD,
HALE HOLDEN,
CHAS. DONNELLY,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

To amount brought forward	$8,568.75
Deduct therefrom deposits for costs	40.00
	8,528.75
One-third thereof under the stipulation apportioned to this case	2,842.92
To clerk's fees in this cause	21.00
To making chancery final record	101.55
	$2,965.47

Costs taxed at $2,965.47, this 17th day of October, A. D. 1910.
HENRY D. LANG, *Clerk.*

(Endorsed:) Stipulation for taxation of costs. Filed October 17th, 1910. Henry D. Lang, clerk.

1901 Thereafter and on the same day the following judgment for costs was entered of record in said cause, to wit:

1902 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes: June term, A. D. 1910. October 17th, 1910.

Monday morning: Court opened pursuant to adjournment.
Present: Hon. Walter H. Sanborn, circuit judge; Hon. Charles A. Willard, judge; Henry D. Lang, clerk.

UNION PACIFIC RAILROAD COMPANY; OREGON Short Line Railroad Co.; Oregon Railroad & Navigation Co.; Southern Pacific Company; Northern Pacific Railway Co.; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; and Oregon and California Railroad Company. *vs.* INTERSTATE COMMERCE COMMISSION.	No. 883. Equity.

In accordance with the final decree entered herein on the 13th day of October, 1910, and the stipulation of the solicitors for the respective parties hereto this day filed herein, it is by the court ordered, adjudged, and decreed that Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company do have and recover of and from the Interstate Commerce Commission, the defendant herein, their costs and disbursements in this action this day taxed and allowed at the sum of two thousand nine hundred sixty-five dollars and forty-seven cents ($2,965.47), and that they have execution therefor.

A true record,

Attest: HENRY D. LANG, *Clerk*.

1903 That thereafter and on the same day the following appeals papers were filed and entered of record in said cause, to wit:

Assignment of errors and prayer for reversal.
Petition for appeal.
Order allowing appeal.
Citation and proof of service thereof.
Præcipe for return to U. S. Supreme Court, and
Stipulation as to record upon appeal.

1904 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.

Assignment of errors.

Now comes the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the United States attorney, and charges that in the order and decree rendered by said Circuit Court for said district in the above entitled cause on the tenth day of October, 1910, wherein and whereby said court suspended the order of the Interstate Commerce Commission, as therein shown, and restrained and enjoined the enforcement of the same, and in the record and proceedings therein, there is manifest error, to its injury, in this, to wit:

1. Said Circuit Court erred in not dismissing the bill and amended bill of complaint for want of equity.

2. Said Circuit Court erred in not dismissing complainants' bill and amended bill for want of jurisdiction.

3. Said Circuit Court erred in holding that the said order of the commission was erroneous and unlawful and beyond the power of the commission to make.

4. Said Circuit Court erred in ordering that said order of the commission be suspended, set aside, and held for naught and its attorneys, agents, and employees be restrained and enjoined from enforcing the same.

5. Said Circuit Court erred in suspending, annulling, and holding void said orders of the said commission.

Wherefore the Interstate Commerce Commission prays that the decree of said Circuit Court rendered on the tenth day of October,
1905 1910, be reversed, and that said Circuit Court *day of October, 1910, be reversed, and that said Circuit Court* be ordered to enter a decree dismissing the amended petition or bill of complaint in the above entitled cause by said complaint against said Interstate Commerce Commission.

CHAS. C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant to the United States Attorney.

(Endorsed:) Assignments of error and prayer for reversal. Filed October 17, 1910. Henry D. Lang, clerk.

1906 In the Circuit Court of United States for the District of Minnesota.

UNION PACIFIC RAILROAD COMPANY ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883.

Petition for appeal.

The Interstate Commerce Commission, by Honorable Charles C. Houpt, United States attorney for the District of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, being thereunto duly authorized, represents that in the decree or order of said circuit court in the above stated case, rendered on the tenth day of October, 1910, there is manifest error to its injury, and, therefore, prays for an order granting appeal from said decree to the Supreme Court of the United States.

CHAS. C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Asst. to the United States Attorney.

(Endorsed:) Petition for appeal. Filed October 17, 1910. Henry D. Lang, clerk.

1907 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILWAY COMPANY ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883.

Order allowing appeal.

In this cause the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the District of Minnesota, and Luthur M. Walter, special assistant to the said United States attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the tenth day of October, 1910, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of $3,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 11th day of November, 1910.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order allowing appeal. Filed October 17, 1910. Henry D. Lang, clerk.

1908 UNITED STATES OF AMERICA.

Circuit Court, Eighth Circuit.

Citation.

United States of America to Union Pacific Railroad Company et al., greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the Capitol, in the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. Circuit Court for the District of Minnesota, Third Division, wherein the Interstate Commerce Commission is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said petition mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said court, this 17th day of October, A. D. 1910.

WALTER H. SANBORN,
Judge of Said Court.

Due service of the foregoing citation by copy at St. Paul, Minnesota, is hereby admitted this 17th day of October A. D. 1910.

F. C. DILLARD,
HALE HOLDEN,
CHARLES DONNELLY,
Solicitors for Appellees.

(Indorsed:) Entered 883 eq. No. 883 eq. United States Circuit Court, District of Minnesota, 3d Division. Union Pacific Railroad Co. et al., vs. the Interstate Commerce Commission, defendant. Citation filed Oct. 17, 1910. Henry D. Lang, clerk.

1909 Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC RAILWAY COMPANY ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSON, DEFNDANT. } No. 883.

To the clerk of the above named court:

Please make a return upon the appeal to the United States Supreme Court and include therein all the files and records in this cause.

Dated St. Paul, Minnesota.

CHAS. C. HOUPT, *U. S. Atty.*,
LUTHER M. WALTER, *Atty.*,
Complainants' Solicitors.

(Endorsed:) Præcipe for return. Filed October 17, 1910. Henry D. Lang, clerk.

1910 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants,
vs.
THE INTERSTATE COMMERCE COMMISSION, DEfendant. } No. 884. Equity.

GREAT NORTHERN RAILWAY COMPANY, COMplainant,
vs.
THE INTERSTATE COMMERCE COMMISSION, DEfendant. } No. 885. Equity.

It is stipulated and agreed by and between the parties hereto that the clerk of this court in preparing the records for transmission to the Supreme Court of the United States shall not include the record in each of these two cases, it being in each case a duplicate of that

being sent forward in the case of the Union Pacific Railway Company et al. versus The Interstate Commerce Commission, No. 883. The Supreme Court in passing upon the appeal in each of the said cases may use the record in number 883 as the record in all three of said cases.

F. C. DILLARD,
Solicitor for Complainant.
HALE HOLDEN,
Solicitor for Complainant.
CHARLES DONNELLY,
Solicitor for Complainant.
CHARLES C. HOUPT,
Solicitor for Defendant.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation as to record upon appeal. Filed October 17, 1910. Henry D. Lang, clerk.

1911 UNITED STATES OF AMERICA.

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 1,911 pages, numbered consecutively from 1 to 1911, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause except the original bill of complaint, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 28th day of October, A. D. 1910.

[SEAL.]

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

(Indorsement on cover:) File No. 22423. Minnesota, C. C. U. S. Term No. 451. The Interstate Commerce Commission, appellant, vs. Union Pacific Railroad Company et al. Filed November 30th, 1910. File No. 22423.

○

IN THE

Circuit Court of the United States.

FOR THE DISTRICT OF MINNESOTA,

THIRD DIVISION.

UNION PACIFIC RAILROAD CO., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., and Oregon and California Railroad Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity.

No. 883.

NORTHERN PACIFIC RAILWAY CO., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., and Oregon Railroad and Navigation Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity.

No. 884.

GREAT NORTHERN RAILWAY CO., Northern Pacific Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., and Southern Pacific Co., Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity.

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HON. FREDERICK N. DICKSON, Master.

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IN THE

Circuit Court of the United States.

FOR THE DISTRICT OF MINNESOTA,
THIRD DIVISION.

UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and Oregon and California Railroad Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 884.
GREAT NORTHERN RAILWAY COMPANY, Northern Pacific Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 885.

TRANSCRIPT OF RECORD.

These causes came on to be heard before the Special Master.

Hon. Frederick N. Dickson, in Room 326, Federal Building, St. Paul, Minnesota, on Tuesday, April 13, 1909, at 10 o'clock.

The following proceedings were thereupon had:

The Master: Gentlemen, will you kindly announce the various appearances for the reporter so he can get a record of them.

Mr. Holden: My name is Hale Holden. I appear, with Mr. Charles Donnelly, for the Northern Pacific, the Great Northern, and the Chicago, Burlington & Quincy lines, in each of the three cases Mr. F. C. Dillard appears for the Union Pacific, Oregon Short Line, Oregon Railroad & Navigation Company, Southern Pacific Company, and also the Oregon & California Railroad Company, which is a complainant in one, if not all, of the cases.

Mr. Teal: For the defendant, please enter the appearance of Mr. Charles C. Houpt, United States Attorney, Mr. Luther M. Walter, Mr. W. A. Wimbish, and Mr. J. N. Teal.

Mr. Holden: Because of reasons affecting the counsel on both sides, we came to an agreement some days ago that there should be a stipulation entered into for an extension of the time for taking complainants' testimony, and also if desired, for the taking of testimony on behalf of the defendant, and in pursuance of the stipulation an order will be asked of the court carrying it out. We will arrange that among ourselves as to the length of time necessary. I think it will be but a very short time. These three cases, I take it, will be heard together, as they involve substantially the same issues and the same subject-matters in each case.

MR. HOLDEN'S OPENING STATEMENT.

It seems to me that perhaps it would be of some help to the Master if a brief statement of the nature of these cases and the circumstances which have led up to this point in the litigation, were made.

I have a map here, which I cannot find a place to hang, but if it will assist your Honor I will lay it on the desk, and perhaps as I speak it may guide you a little.

As of course your Honor knows, the chief lines involved in this controversy are the Union Pacific lines, the Northern Pacific lines, and the Great Northern lines. Each of those three systems reaches from the Pacific Coast in the Northwest to various destinations in the Middle West, the Union Pacific line terminating at the Missouri River (at Omaha and Kansas City), the Great Northern and the Northern Pacific terminating at Minneapolis and St. Paul and Duluth, at the head of the Lakes.

The only position the Chicago, Burlington & Quincy Railroad occupies in this litigation is by virtue of the fact that at Billings, Montana, it connects with the Northern Pacific; and since this proceeding was begun and heard by the Commission, a connection has been made north of Billings with the Great Northern Road, and by that connection the gateway is open to what is called Missouri River territory, the Burlington leading to Omaha and Kansas City and various other points on the Missouri River. The Burlington also connects at St. Paul and Minneapolis with the Great Northern and the Northern Pacific.

In the record of this case a large number of other railroads were made parties, but as the case progresses your Honor will see that their position in the case is of lesser importance, and the whole case turns practically around the rates applicable over the lines of the three chief lines which I have mentioned.

I will refer a little later to some of the earlier facts which perhaps bear in a historical way on the development of the lumber industry in the Northwest, and the history of the rates; but speaking particularly with reference to this litigation, perhaps it would be better to begin at the time when the litigation arose, so that we may have clearly in mind just the present situation.

On November 1, 1907, the carriers engaged in bringing lum-

ber from the Pacific coast, filed with the Interstate Commerce Commission a new tariff of rates covering that traffic. That tariff is known as Interstate Commerce Commission No. 850. It was published by the Trans-Continental Freight Bureau, an association of carriers for the more expeditious and uniform handling and publication of tariffs, the headquarters of which is located in Chicago. It a mere agency for getting out tariffs.

There are a great number of rates involved in a tariff of that kind, and it will serve no purpose to refer to more than two or three of those rates as typical rates, because the balance of them all surround the base or fundamental rates.

The rate just prior to November 1, 1907, and which had been in effect for a number of years, from Pacific coast points to St. Paul, was 40 cents a hundredweight on fir lumber. I speak chiefly of the fir lumber rate. There are certain other rates on different kinds of lumber which are of lesser importance in this hearing, but the fir lumber rate is the chief matter involved.

As I say, the previous rate from the coast to St. Paul was 40 cents. The previous rate from the coast to Omaha, as a typical Missouri River point, was 50 cents. The rate from St. Paul to Chicago was 10 cents. That made a rate through St. Paul to Chicago of 40 plus 10—or 50 cents. If the rate to Omaha was 50 cents, as I have stated, in order to carry lumber to Chicago through Omaha, those lines would have to make the same rate as applied through St. Paul; that rate, as I have already said, was 50 cents, and therefore the Omaha rate of 50 cents was applied clear to Chicago, through the Omaha gateway, and therefore the rate to Chicago via St. Paul or via Omaha was 50 cents. It is perfectly plain that with two competing lines one cannot charge a higher rate than the other and get any of the business. They have to meet the rate, just like two merchants who sell the same kind of goods have to sell at the same price; otherwise one gets the business and the other gets none.

By the new tariff, filed on November 1, 1907, an advance was made in those rates. Instead of a rate of 40 cents from the coast to St. Paul, it was advanced to 50 cents—an advance of 10 cents. The Omaha rate of 50 cents was advanced to 55 cents—an advance there of 5 cents; and, by a similar line of reasoning, the Chicago rate was made 60 cents. Those rates applied, as your Honor will see on the map, from the Coast territory.

As your Honor is well familiar, the Cascade mountains, running north and south, parallel with the Pacific coast, leave on the west side, between the coast and the top of the mountains, a large district, which is heavily timbered and covered with timber of large, magnificent proportions; and the district west of the Cascade mountains to the west is embraced in the district which will be frequently referred to and is often spoken of in the record as the Coast district; the Coast basis of rates applies from that territory. On the east side of the Cascade mountains, as you go down the slope, there is some timber, not however of the same magnificent character as that on the west side. It will be mentioned (and is in the record) at times that on the east slope of the Cascade mountains there is a slightly lower basis of rates. But that country is not much dwelt on in the testimony, and for the present purposes it is not necessary to speak further about it.

As you go away from the Cascade mountains, coming east, you come into an open, treeless country, perhaps three or four hundred miles in extent, which is a large wheat and grain-growing country, no timber or lumber practically involved. I am speaking now particularly of the state of Washington. I think what I say is also largely true of the state of Oregon. As you approach Spokane you begin to go up the west slope of the Rocky mountains and you find timber again. There has always been a rate basis from Spokane to these eastern destinations. In the early days, when the first rates were put in, the same rate applied as a "blanket," as it is called, all over the western country, but there was no lumber being cut in Spokane except for local consumption and perhaps for short distance shipment in the state of Washington; there was no eastern shipment. By later tariffs, when the manufacture of lumber began in Spokane, a slightly lower scale of rates began to be installed for eastern shipments from Spokane.

As we come further east and continue up the slope of the Rocky Mountains, we come to another district which, on the Great Northern road, is typified by Kalispell, Columbia Falls, Whitefish. On the Northern Pacific the shipping points are Hamilton, St. Regis, Missoula; down on the Union Pacific and Oregon Short Line Railroad, Boise, Idaho, and Baker City. Those shipping points have come to be called the Montana-Oregon basis or to be found in the Mantana-Oregon rate territory, and by the tariff of November 1, 1907, a differential, as it is called—that is to say, a rate lower than the Coast

rate—was given to the Montana-Oregon territory. So, roughly speaking, by the tariff of November 1st the Coast rate was used as a base, and the Spokane territory had a differential under the Coast, and the Montana-Oregon territory an additional differential under the Coast for shipments to Missouri River country and beyond.

Now, the rate, previous to November 1, 1907, from Spokane to St. Paul, was, as I say, 40 cents. It was a blanket rate—the same rate as the Coast had. To Omaha there was the same rate, of 45 cents. The Coast rate to Chicago was 50 cents. So there was a differential, even in those days, to Omaha, of 5 cents. The rate to Chicago from Spokane was 50 cents, the same as the rate from the Coast. By the new tariff of November 1st the St. Paul rate was advanced to 50 cents, as I have stated, but the Spokane rate was advanced to 45 cents, leaving a differential of 5 cents; so that Spokane had a 5-cent less rate to St. Paul than the Coast had. To Omaha the rate from Spokane was 50 cents, from the Coast to Omaha was made 55; so the 5-cent differential was preserved there. To Chicago the Spokane rate was 55 cents, and coast rate being 60 cents—the 5-cent differential being preserved there. The Montana-Oregon basis rate to St. Paul on November 1st was made 43 cents. So we had from the Coast 50 cents, from Spokane 45, and from Montana-Oregon country 43 cents, and there were corresponding rates to Omaha and Chicago.

Now, in the tariffs the forest products are grouped in groups A, B, C, and D. Fir lumber falls in Group C. There are other groups which I will not identify except in this way: long timbers, taking two or more cars, and cedar lumber and shingles have always taken a higher rate than fir, they command a higher price, and the conditions of traffic and the commercial conditions surrounding them are on a different basis than on fir lumber, and you will find in the tariffs a higher scale of rates on those other kinds of products; but the mere mention of that will be sufficient at this time to account for the different groups which the tariff shows and the different rates, but, as I say, the important consideration I think in this case will be the base rate or the rate on fir.

Now, when that tariff was filed, it was filed to become effective November 1, 1907; it was filed more than thirty days prior to that time. These complainants were brought before the Interstate Commerce Commission by different interests, the lumber interests of the state of Washington being repre-

sented by the Pacific Coast Lumber Manufacturers Association and other firms and individuals interested in the manufacture and shipment of lumber, and in another district of the state the Southwest Washington Lumber Association, and in the state of Oregon the Oregon & Washington Lumber Manufacturers Association and allied interests, bringing their separate complaints, all alleging in substance that the advance in rates was excessive, and that the resultant rates shown in the new tariffs were unreasonably high. Coincident with this complaint, or substantially so, representatives of the Spokane lumber district brought complaint, the title or name of the first complainant being the Potlatch Lumber Company, located at Potlatch in the state of Washington, and other manufacturers in that district. They brought their complaint, which was not heard by the Commission with the Coast cases, but heard later, and decided all together at the same time.

The issues were joined and hearing was had, December 17, 1907, before the Commission in Washington, in the Coast cases. In March a hearing was held in Washington before the Commission, in the Potlatch case, involving the Spokane rates. An argument of all the cases was had before the Commission. On June 2, 1908, the Commission handed down its decision, with which your Honor is perhaps familiar, but which partially sustained the position taken by the carriers; in the remainder of the matter it denied their position, and the Commission, under its power alleged to exist in the amended rate law, established a scale of rates applicable to this traffic. Those orders were modified in certain minor particulars during the ensuing two or three months and extensions were necessarily granted of the effective date, and on October 15, 1908, the tariff became effective covering those rates.

These suits have been brought to test the validity of the order of the Commission, and they have been brought under the rules of law as we conceive them to exist, as laid down by the decision not only of the Eighth Circuit Court of Appeals, to which I will briefly refer in a moment, but other courts, including the Supreme Court of the United States; and as we conceive the matter to be, it will be your Honor's duty to try these cases de novo.

To understand the conditions which brought about the change in those rates, I think it important to dwell for a moment on the history of this lumber industry.

In 1893 the Great Northern road was completed to the Coast. That date becomes important because that brought

about a change in rates. At that time, as your Honor well knows, the production of lumber in Minnesota, Wisconsin, and Michigan was at a high tide. The testimony in this case shows that the output of white pine lumber was fully supplying all of this middle western country. I recall one witness testified that the city of St. Louis which now, today, is down almost at the gateway of the yellow pine district of the south, was built of white pine from the north. There was such an abundance of that output that it supplied the markets of the states of Iowa and Missouri, largely in the states of Kansas and Nebraska, eastern states, etc. It was the only lumber industry in this middle western country that was furnishing lumber, all grades, for the building up of the country.

The rate situation (in the briefest outline) on white pine has a great deal to do with the lake rates from Duluth to Chicago. The schooners carry lumber from the head of the lakes to Chicago, and have always done so; and when I mention the rate of 10 cents from St. Paul to Chicago for a haul, as your Honor knows, of nearly 500 miles (not quite) it is important to recognize the character of that rate. It is made so because of the rate from Duluth by water, and by schooners and tramp steamers to Chicago. It is what is called a rate forced down by water competition. The rail carriers have to meet that kind of a rate; otherwise they will get little, if any, of the business. That low rate from Duluth to Chicago has had its effect on rates into that whole intermediate territory, and it is within the last two or three years, to my knowledge, that rates out in central Iowa have had to be reduced because the all-rail rates from northern Minnesota points to central Iowa were found to be higher than the combination through the lakes. So, that brought about a low scale of rates for the shipment of northern lumber down into this middle western country. That was the condition of the white pine industry, in the very briefest outline, along about 1893.

Now, about that same time, or some few years before, the yellow pine industry began to creep north. It will appear in this case (and the record, I think, is pretty clear on it already) that the great movement of traffic at that time was to the south, over the Illinois Central. They had little, if anything, to bring to the north. Their cars came back empty. They were looking for something to balance their traffic, and the yellow pine in enormous quantities in the south offered a traffic of that kind, and there began a movement of yellow pine lumber to the north. They were able to make a very

low rate for the reason, as I say, that they had these empty cars coming north. They had a water grade road, practically no operating difficulties. But in order to meet the competition of the northern pine which was already installed in the country, they required a low rate, because the northern lumber already had a low rate for the reasons which I have stated to you. That brought about a scale of rates from the south up into such country as St. Louis and all the middle country here. Those two lumbers went from the north and went from the south in 1893 and the following years, and were in sharp competition in all that middle country, reaching as far as Colorado, the testimony shows, Nebraska and Kansas. Those two lumbers had the market completely at their control. Each had a low basis of rate; and, to my conception, those low rates relate and have their origin, first, in the lake situation; and, second, in the traffic conditions of the lines leading to the south, needing something to fill their empty cars coming north. As time has gone on the movement and growth to the south has greatly increased; it continues to offer and furnish empty cars in the south for return lumber loading, and in that particular, as will indicate a little bit later, their conditions have been markedly different from those of the western roads. Their traffic continues to be well balanced in the south; their grades and operating conditions are of the most favorable. I merely make that suggestion now, because you will see the pertinency in a few moments.

Your Honor recalls the financial conditions in the country in 1893. Prices were at a very low ebb. We were just in the midst of a panic, and it was several years before we began to come out of it. In 1893, as I say, the Great Northern road was completed through to the Coast. At that time the Northern Pacific was already there and had been for some years. It had been through one receivership and was approaching a second. The Union Pacific lines were already at the Coast. Their history is well known. At that time there was not a movement of any kind, I think; if there was, it was so insignificant as not to be entitled to mention. There was no movement of lumber east-bound from the Coast. There was a scale of rates, however, and the rate from the Coast to St. Paul was then 55 cents—approximately at that time. It changed from time to time, but approximately in 1893 the Coast rate to St. Paul was 55 cents. The Coast rate to Omaha was 55 cents, and the Coast rate to Chicago was 60 cents. As I say, in those days the manufacture and eastern shipment of lum-

ber either in Spokane or the Montana-Oregon territory had not begun, and while there were to some extent rates applicable from those districts, they were what in the railroad world are called "paper" rates. They moved no business, because there was none to move. Generally speaking, the scale of rates that applied at the cosat applied all over that country west of the summit of the Rocky Mountains, as a blanket. There are exceptions to that, but that is the general situation, and the chief reason was there was no business from any part of the Coast and there was no east-bound shipment worthy of the name from the Coast under that scale of rates. The situation of the Great Northern road when it got to the Coast was the need of business. At that time the drift of traffic was altogether to the west. The manufacturers in the east were shipping their products to the west for the building up of that country. The people out there had nothing to ship east. The testimony will show you that, after the Great Northern road got to the Coast, for some years the cars came back empty from the Coast, almost without noticeable exception. The traffic was all one way. The Coast industry had begun many years before, but it was devoted to what they call coast-wise shipments, that is, by schooners and steamers down to coast points and then perhaps shipment inland, and also to local consumption. There were mills there, many of them, and there was doubtless a profitable and extensive industry, but the eastern shipment was the question I have reference to. At that time, the proof is, the prices of Coast lumber were very low; naturally they would be because of the tremendous abundance of the product out there. But the importance of that situation in reference to the price is in connection with the competition which that Coast lumber had to meet if it came east, to compete with Minnesota northern pine and the yellow pine from the south.

In order to get some east-bound loading, the Great Northern road inaugurated a reduction in the lumber rates, and in place of the 55-cent rate, which I have mentioned, from the Coast to St. Paul, it made the rate 40 cents, and corresponding rates were automatically put in at other eastern destinations.

The Coast lumber, in order to move, had, as I say, a set of conditions which required a low rate. It had to come in and begin to displace the northern or the southern product. It was a strange and unknown product. It needed favorable consideration for that reason. The railroad needed business.

It needed something to load its empty cars back, and anything, any price almost that would pay the difference between the cost of carrying an empty car back and bringing a loaded car, was just that much profit and that much on the right side of the ledger.

But, as I say, it is essential to recall and keep in mind the existing conditions that the northern and southern lumber had created in the country to which we were beginning to bring the western lumbers. Those lumbers were at a low ebb on price, they had low rates, and their sources of supply were comparatively near to the places and points of destination and consumption; to bring Coast lumber from the Pacific district, 2,000 miles, to lay it down in Chicago, Iowa, Kansas, Missouri, all this middle country, called for a very low and. what we have come to thoroughly believe, was an abnormal basis of rates, and was justified at that time by reason of all of those conditions. The chief and underlying condition was that the railroad was justified at that time, because its own costs of operation were at a comparatively low ebb. Wages were then low compared to what they have been since. Cost of construction was low. Bridge timbers and lumber products themselves, which the railroads require in large measure, were low. Every element of operating cost was low compared with what it has been since. They had their empty cars coming back. Anything that would fill an empty car and give a little revenue was simply that much aid in the successful operation of the road. It was what was called surplus business, of which you will hear more later on, and that class of business, as the books have recognized and the Commissions and the courts have recognized, justifies that kind of treatment; it justifies the putting in of that character of a rate, and so long as it remains surplus traffic it may continue, but changed conditions necessitate a different rate.

It was some years after 1903 before there was any notable advance in the movement from the Coast. The proof will be that, continuing down to 1900, the growth of the business was slow, and of that I think your Honor will be satisfied because of the low ebb in prices, because of the continuance of the supply of lumber from the north and also from the south. After 1900 conditions began to change, prices began to go up, the country began to grow, and we all know what the conditions have been since. This rate, as a practical matter in the opinion of the railroad companies, ought to have been advanced some time before, but delay was made in the effort to

find other forms of traffic to fill in and bring out more revenue, and for that purpose there is proof in the record showing the effort to develop an export and import trade with the countries beyond the Pacific Ocean. I merely mention the fact to explain what the record shows. For a year or two there was considerable advance in that business and it did furnish loading for cars, but that has disappeared, for reasons which are not important now to mention, and that effort failed.

Now, those are, in brief, the conditions that underlay the situation at the time the rate of 40 cents to St. Paul and 50 cents to Chicago was made.

Along in 1905 and 1906 it became very apparent that the tremendous change in conditions required a new consideration of this rate basis. The railroad cost had enormously increased. You will be told of the increase in wages, of all classes of service—since 1902 from 20 to 40 per cent., embracing every class of railroad labor. In ten years taxes have increased nearly 50 per cent. Lumber for railroad work, all kinds—car sills, drop sidings, bridge timbers, and every kind of lumber—and your Honor knows that the railroads are the chief purchasers of lumber in the country—advanced 121 per cent—more than twice as much—since 1896. Those elements drew attention to themselves in the consideration of the question whether that rate could possibly be longer continued. The empty car haul, by reason of the great growth in this lumber business and the shipment of it east, had completely reversed itself. Mind you, as I have said, in 1893 we were hauling our empty cars back from the Coast, empty—we had nothing to put in them. There was a little silk from the Orient, a little tea, and occasionally some dried fruits, canned fruits, canned salmon, but in such minor quantities that it did not furnish loading for one car in twenty, and light character of loading at that.

With that condition existing in 1893, when the rate was made, we find that in 1905 and 1906 we were hauling westbound—for instance, through the Cascade mountains there is a tunnel, and by actual count, in the summer of 1907, in the month of June, there were 66 cars counted through that tunnel that day going west; in July there were 89.

The Master: Going west or east?

Mr. Holden: Going west. In August there were 54 counted west through that tunnel, and so on. Now, I do not claim that those cars moved west all the way from St. Paul, but I

do assert that the proof shows that a large percentage of their mileage was empty west-bound, and I do assert that the proof will satisfy your Honor, and more than that I will indicate to you that the Commission in its orders in this case, and in its opinion, finds that the trend of empty car movement has strongly reversed itself and is now west-bound. I think it is a fair statement that between 35 and 40 per cent of the west-bound movement of cars is empty. Now, why? There is no industry on the Coast that calls for that amount of empty cars. We carry a great deal of stuff west, loaded, and those cars are made empty, and the proof will show you that they will furnish all the empty cars for the other kind of traffic, such as there is shipping east from the Coast, and you will be satisfied from the proof that the call for empty cars on the Coast is for lumber. That is one of the elements of increased cost—the movement of those empty cars constantly to the west to fill up with lumber loading.

It is only worth while mentioning just the fact that this enormous tonnage of lumber has brought about enormous capital expenditures to make the traffic move more rapidly and with less expense. The record will show enormous expenditures in the way of line changes, the lengthening of sidetracks, passing tracks, reducing grades, tunnels, and matters of that kind, the purchase of larger equipment, cars and locomotives. And when you come to know and understand the tremendous volume of the lumber traffic, you will be satisfied that a large amount of that expenditure has been caused to answer the demands and respond to the demands of that traffic. You will be told (and the record shows) of almost a total inability at times, during the height of the traffic in lumber during 1906 and 1907, of these railroads to handle it. Car shortage existed, to the great mortification of the railroads, and yet to their absolute inability to remedy it, and their lines were completely broken down with the excess of traffic, and the larger factor of it all was the lumber traffic. It is mentioned in the record that they have built from Portland to Spokane just recently, and got it open, the Spokane & Seattle road. The Northern Pacific and the Great Northern have built it together. It eliminates some of the heaviest grades in the state of Washington and Oregon. They spent over $50,000,000 of new money, and a large portion of that is to make the eastern transit of lumber easier and more rapid.

Now, all of that money has gone into these properties. It

has got to be treated as any other capital investment must be treated. It is entitled to a return. And when it is said to you and when it appears in this record and in the opinions, that the amplification of these systems has made the transportation of lumber cheaper and easier, there may be truth in it—we hope it is true after spending all this money, and it ought to be true—but it must not be forgotten that if it is true it has come to be true at the expense of enormous sums of money spent in the lines I have mentioned.

The conclusion of the Commission, I take it, have recognized the force of the claim made by the carriers for this advanced rate. The chief and essential ground upon which the demand is based is the changed conditions, the enormous increase in the cost of doing business. The Commission, as I say, sustained our position practically one-half. They permitted an advance of 5 cents east of the Missouri river. I should indicate to you what becomes a by-word and a common saying in this litigation—the Commission drew a line which they called the line from Pembina to Port Arthur. Pembina is a station on the international boundary, or approximately so; it is on the Red River, the western boundary of Minnesota. They drew a line through Pembina, running approximately due south, following the state lines approximately until you get to Sioux City, and then the Missouri River down through Omaha and Kansas City, and then the line of the Kansas Southern road to Port Arthur, Texas, and that is the Pembina-Port Arthur line. West of that line they restored the rates as they had been, denied the application for an advance. East of that line they permitted an advance of 5 cents. So I say the reason, the only reason that can appear and the reason the Commission gave, is that they recognized and sustained our position to that extent. Two of the Commissioners dissented from the majority opinion and agreed substantially with the carriers' position. Now, as a lawyer I recognize that a dissenting opinion of a court is of no authority, notwithstanding that we all know at times later consideration by the same court leads to the adoption of the dissent as the sound law. But the Interstate Commerce Commission, as my friends on the other side will bear down on to you with great emphasis, is an expert body, and I claim and will claim in the final argument of this case that the dissent of these two members and the reasons given by the chairman are a matter of which your Honor must take into considera-

tion as a matter of great weight in your final consideration of this case.

We have come to an understanding with our friends on the other side, for the purpose of expediting the hearing, that we shall use substantially the record taken before the Commission. In addition to that we shall offer evidence on behalf of the Northern Pacific and the Great Northern Roads showing the present value of the properties.

Now, I want to explain my purpose in that so there will be no misunderstanding about it. I do not claim that that evidence has any direct bearing upon what is a reasonable lumber rate. But the issue is practically tendered in the answer of the Interstate Commerce Commission in this case, and I will refer to it later. But it will be our aim and effort by this proof to show that the present value of these properties is such that the earnings derived therefrom bring to the owners of the property far less than a reasonable return upon the property or the value of the property devoted to the public use. If that be true, the fundamental principle exists that the owners of these properties have a legal right to a greater return if, without violation—and, mind you, I say this so there will be no misunderstanding of the question—without the violation of any other principle or public right, that increased return can be lawfully secured.

It would seeem to rest in the mind of the Commission, and has appeared in various other ways heretofore, that the returns of these roads—the northern roads and the Union Pacific road—have been so ample in the past and at the present time as not to entitle them to any increase in revenue or any advance in rates on any item of traffic; on the contrary, that the trend should be the other way. The trend is the other way. Across the hall, the trend is to be indicated by the action of the State of Minnesota. There is a constant lowering of rates going on all over those systems.

This lumber rate, as we shall hope to prove, being lower than it has any right to be, this lumber traffic being at a rate lower than it has any right to move on, has not been carrying its fair share of the transportation burden; and if other rates must be lowered, as they are being lowered, rates such as this lumber rate must come up, because the principle is well recognized that one form of traffic cannot move at the expense of other forms of traffic.

So, I say if it appears that the return on these properties

at their fair value is less than a reasonable rate of return, and if it appears that this lumber rate is lower than a reasonable rate, we shall point to the valuation of the property and the return made on it as additional reason and as justification in law for bringing up this lumber rate to a reasonable basis, but no further; and I do not claim that the financial operations of a railroad system, good, bad or indifferent, will ever justify—they never can justify the charging of an unreasonable rate. That principle is too well settled to need further mention. But if the rate is below what it might properly and lawfully be and still remain a reasonable rate, the owners of these properties have a right to have that advance made on that commodity.

The Master: Would that be very material where the inquiry was directed merely to one commodity?

Mr. Holden: As I say, it is not material as to the character of the rate. It offers no guide in determining whether the 40-cent rate or the 50-cent rate is a reasonable rate; but in view of the issue tendered in the answer, in view of the opinion of the Commission, which will doubtless be brought before your Honor, tendering, as I conceive they do, an issue on that subject to be met, we are not satisfied to leave the record in the shape that the Commission has left it, by simply addressing themselves to dividends on stock or interest on bonds or the accumulation of proper and necessary surpluses. The Supreme Court has laid down so recently and so clearly that there can be no question on the subject, that the present value of the property is the value upon which the owners are entitled to earn a return, and the Supreme Court has said in the Gas case that if the value of property has increased beyond that which it originally cost, the owners of the property are entitled to a return upon the increased value; and, as I say, if it were not for the issue tendered on that subject, and (as we claim) the gross error and the prejudicial error which has crept into the consideration of this case, and bearing, as it does, against the demand of these carriers for a reasonable rate on this traffic, I would not have felt disposed to go into that issue. But I think it is proper that we should and I think it is necessary that we should, so that we may have a clear understanding on that subject and we be not left in the position as perhaps the Commission has placed us, of, regardless of the public right, demanding an extortionate dividend on stock and matters of that kind. We are not in

that position. We are not seeking an extortionate return. We are seeking, as nearly as may be, by still charging what we insist are reasonable rates, to have this property earn something like a fair return.

In the record there are a great many comparisons with the rates of other roads. The chief comparison offered by the railroads grew out of a decision of the Interstate Commerce Commission in what they call the Yellow Pine and Tift cases. The southern roads, some years ago, sought to advance their lumber rates from southern points of origin to the Ohio river. That brought about considerable litigation, and the advance was condemned. Certain rates for certain distances were considered and approved by the Commission, and the Illinois Central road, of the character which I referred to some time ago, was perhaps used as the typical road. Taking those roads as a basis of comparison, the record will show you the difference in the operating conditions of the Great Northern and Northern Pacific lines as compared with a line such as the Illinois Central; on the one hand, the Illinois Central having practically a level grade clear to Chicago from the Gulf; on the other hand, these western roads crossing over mountain ranges; the Illinois Central having an evenly balanced traffic, grain moving south and cotton and lumber moving north; these roads, as I say, now having a distorted empty car movement, hauling cars to the Coast in order to get lumber to supply the needs. Those facts will be spread before you for your consideration of the question whether or not the rates on the Illinois Central, in the yellow pine district—or at least to determine the value and the bearing of those rates with the rates which we are now asking from the west.

Another issue in this case to which a very large amount of testimony was devoted before the Commission, was the so-called commercial conditions surrounding the lumber industry. I want to be perfectly clear on that subject. Our friends the lumbermen, when they brought their complaints before the Commission, alleged in language which admitted of no misunderstanding that if these advance rates went into effect the entire lumber industry on the Pacific Coast would be paralyzed; their coast-wise trade might remain, their local trade might remain, but the great field into which they, as the expression is, have dumped their common grades of lumber, in this Middle West, would be absolutely taken away from them.

Now, mind you, the proof is that by this time and by the time when the hearing was on before the Commission, and for some time before, the Minnesota competition had almost disappeared. Everybody knows that the Minnesota, Wisconsin, and Michigan woods are pretty nearly cut out, and the proof is that the manufacturers in this northern country find more profitable markets in shipping their output east. The yellow pine still comes from the south in great volume, although the proof is that it has about reached its crest. There may be a question about that. But it still is a very active factor, without question.

Now, with an assertion of that kind by lumbermen, involving a traffic so valuable and so important to these railway companies as this, it was naturally of the gravest concern, and it naturally called an inquiry on that subject, whether or not that were true; and without doubt, if it were true, if the establishment of such rates would absolutely paralyze an industry that for ten or fifteen years had been growing and finally had reached a great volume, those rates ought not to go in. A large amount of testimony was taken upon the commercial conditions of the lumbermen, and the proof showed enormous increases in every item in the way of a price, the price of stumpage, the price of logs, the price of lumber—enormous profits. The proof also showed enormous increases in expenses, just as we have all encountered them.

Now, that proof was not taken, notwithstanding one of the Commissioners in his opinion seemed to think it was,—it was not taken for the purpose on the part of these railroads to inquire into the profits of these gentlemen or in the slightest degree to share in them. It is helpful to these railroads that they have been profitable and were making profit at that time. There is no position in this case on the part of any railroad bearing upon the purpose or justifying any charge that we, in advancing these rates, have sought in the slightest degree to share in their profits, and the only purpose for which that evidence can be and should be used is to determine the truth of the assertion that the industry cannot bear the advance. We assert that the proof conclusively proves that it can amply bear it and it ought to bear it, that the time has passed when they ought to move their lumber over mountain ranges, 2,000 miles, at any such rate. That is the only way in which that proof was offered and the only way in which it should be considered.

Now, I have just about concluded all I care to say. I think we should consider for a minute some of the principles involved in a case of this kind. The procedure in these cases has not perhaps been finally settled by the courts; but as I conceive this case to be or to mean, it is a consideration anew by your Honor of the questions which were presented to the Commission as of the time when those questions were presented. I shall meet violent opposition from my friends on the other side.

The Master: Do you mean to say the conditions that existed at the time of the hearing before the Commission?

Mr. Holden: Exactly; because your office and that of the court is to determine, as I conceive the matter, whether the Commission reached on the evidence and on the case before it proper conclusions.

The Supreme Court has said that there is no presumption of wrong against a carrier because it advances its rate. That is one of the principles which underlies the trial of a case of this kind.

"It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly, when rates are changed, the carrier making the change, must, when properly called upon, be able to give a good reason therefor."

We recognize that principle.

"But the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done. Those presumptions of good faith and integrity which have been recognized for ages as attending human action have not been overthrown by any legislation in respect to common carriers."

Now, you will hear much of the presumption which the Interstate Commerce Commission has indulged themselves in —to the limit, if I may use the expression; that because a rate has been continued by a carrier for a long period of time it is presumptively a reasonable rate and an advance in that rate is presumptively a wrong and the burden is at all times upon the carrier advancing the rate to justify it. We deny that principle. We do concede that the Supreme Court is binding upon us, and states the proper rule, that we are called upon to give a reason. When we have given a reason

and shown this enormous change in conditions, we shall contend that the burden then passes to our friends on the other side to prove that the rates we ask are unreasonable.

The Commission itself has said, and said it very recently again, that under the act, as amended, to regulate commerce, the only authority it has to change or condemn a rate filed by a carrier is when the Commission finds that the rate is unreasonable or that it discriminates. The rate-making power is still vested and left in the hands of the carriers. They make their rates subject to regulation. But, as I say, when we have given our reason and shown this enormous change in conditions, we shall contend that the burden is then upon the other side and upon the Commission, under its own announcement and under the principle announced by the courts, —that before they can disturb those rates of November 1, 1907, filed and become legally the rates of these carriers, they must find that they are unreasonable and that the reasons given were not good reasons.

Your Honor, I think, is perhaps familiar with the decision of the Eighth Circuit Court of Appeals, in the case of Missouri, Kansas & Texas Railway Company v. Interstate Commerce Commission, handed down—I haven't the date here with me, but certainly within the last year—much less than that. That was an application for a temporary injunction against the Interstate Commerce Commission and against an order made by them reducing cattle rates. Nevertheless, the court announcing the opinion, per curiam, lays down certain rules for the hearing of cases of this character, which, without doubt, will be of importance to you in considering this case. They say in one rule that "the power to determine and prescribe what are just and reasonable maximum rates to be charged in interstate commerce is in a limited way conferred upon the Interstate Commerce Commission by existing statute law. But the Commission acts only as a legislative or administrative board, and not judicially. Its determination or action does not and cannot preclude judicial inquiry into the justness and reasonableness of the rates within the meaning of the constitutional guaranty, for that is a judicial question." I shall not read all of these rules, because they are not important at this time. But as to determine how far your Honor shall go—and there is a point in which we differ with our friends, and the pleadings show our differences—as de-

termining how far your Honor shall go in considering the facts anew, the Court of Appeals says:

"It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to the ascertainment of what was determined by the Commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but, on the contrary, the hearing may be de novo and may include the taking and consideration of evidence other than that before the Commission."

Now, we have, however, an expert body—this Interstate Commerce Commission having passed upon the facts, and it will be urged that its action is conclusive, like the finding of a jury on the trial court. Without doubt its finding has persuasive bearing to any man's mind. I am not going to quarrel with any such principle as that, but my assertion is that it is to your Honor to exercise in the last analysis your own independent judgment, giving the Commission's finding such weight as you may find from your consideration of the evidence it may be entitled to.

Now, to indicate that I think I am right on that, the Supreme Court of the United States, in an analogous case, the Knoxville water case, announced January 4, 1909, met the point. There was a case where a Master had been appointed to determine the sufficiency of certain water rates imposed upon a water company, and it was argued in the Court of Appeals and in the Supreme Court that his findings were absolutely conclusive, and that the reviewing court could not go behind those findings. Now I want simply to call this to your Honor's attention so that it may be in your mind in determining the scope in which you will view these facts. "In view of the character of the judicial power invoked in such cases, it is not tolerable that its exercise should rest securely upon the findings of a Master even though they be confirmed by the trial court. The power is best safeguarded against abuse by preserving to this court complete freedom in dealing with the facts of each case—complete freedom. Nothing less than this is demanded by the respect due from the judicial to the legislative authority. It must not be understood that the findings of a Master confirmed by the trial court are without weight or that they will not as practical questions sometimes be regarded as conclusive. All that is intended to be said is, that in cases of this character, this court"—the Supreme Court speaking now—"will not fetter its discretion or judgment by

any artificial rules as to the weight of the Master's findings, however useful and well settled those rules may be in ordinary litigation. We approach the discussion of the facts in that spirit."

Now, I say that marks to your Honor precisely the same view that you must take of the findings of this jury of Commissioners. While they do have weight, and at times, and in the absence of good reason, may be conclusive, yet you must approach those facts with complete freedom, without embarrassment, because five out of seven of that jury divided on the result, and the others met the position taken by these carriers to perhaps one-half of the advance claimed.

I read that decision of the Supreme Court to mean, especially in connection with the decision of the Court of Appeals here, that you have and must assert absolute freedom of judgment on these facts,—not that you are to make rates—the courts will not make rates for these carriers, but you are to determine, using the decision of the Interstate Commerce Commission as a matter of evidence, entitled to such respect as from your examination of all of this record you may think it entitled to, taking other facts and other kinds of evidence which will be brought before you, exercising your own independent judgment in the last consideration of the matter, and determine whether or not the conclusions of the Commission were justified and that the rates which they established were and are reasonable rates; or, more accurately stating it, whether the rates promulgated by these carriers on November 1st were reasonable maximum rates for that traffic. You, as I take it, will have to find, before you can sustain the order of the Commission, that those rates were unreasonable rates; otherwise, unless you can find that fact, the Commission was not justified in finding that fact.

In the pleadings in this case, the constitutionality of this law is drawn in question. In addressing myself to the facts and the issues raised by the answer, I have not intended in the slightest degree to overlook or lay that aside, but the understanding, as I understand it to be, is that the argument of that question, which has been raised by demurrer, will be taken up later, and we are all addressing ourselves to the trial of the issues presented by the answer; therefore it is not necessary at this time to further refer to that matter.

MR. DILLARD'S OPENING STATEMENT.

If your Honor please:

Mr. Holden has covered so very fully, and not only so fully but so excellently, all of the points in the case, that I shall address myself to your Honor but a very few minutes, and what I shall say shall be only in the nature of a supplement to what he has said, pointing out the questions that are to be decided by your Honor and the conclusions to be reached by your Honor along the lines as they are laid down by the law.

As was stated by Mr. Holden, there are constitutional questions raised in the case, questions which go to the very meat and marrow of the law; first, as to whether Congress could delegate to anybody the absolute power of making rates; and, secondly, whether or not, if Congress can make such delegation, in having so done in this case it has not so intermingled judicial and legislative questions as to make the law invalid. Those questions, however, will all be taken up later. They are raised by demurrers to the petition, and I need not dwell on them here, as Mr. Holden states, because of the fact that they are to be taken up later.

The points to which I do desire to specifically direct your Honor's attention are these:

This bill treats the findings of the Commission in this case and the evidence upon which those findings were based, in two ways: First, it raises this question of law: that under all the evidence introduced before the Commission, taking it for all that it proved or fairly tended to prove, that the findings of the Commission should have been very different from those which they were. Second, it says, if that is not a question of law, that if under that evidence the Commission might have reached the conclusion which it did reach; if there was enough in the evidence to warrant the Commission in reaching that conclusion (which we deny), that yet this tribunal sits to try the case, as stated by Mr. Holden, de novo. Right on those points arose the essential differences between complainants and the defendant in this case.

Let it be granted for the sake of this argument that the Congress of the United States could have appointed a body which had the right to inaugurate a scheme of rates, a body which had the right to initiate any specific rate. I say for the sake of the argument, waiving for the time being the consti-

tutional questions, let it be granted that that power rested in the hands of Congress. Under this law they have not seen fit to exercise that power.

In a case decided by the Supreme Court of the United States no later than last Monday, the case of Siler and other Commissioners of the State of Kentucky v. Louisville & Nashville Railroad, under a statute very similar to the Interstate Commerce law, the Supreme Court held that the Kentucky Commission had no authority whatever to inaugurate a scheme of rates, and when they endeavored to do so the Supreme Court held that they surpassed any power given them under the law, and permitted an injunction granted by the lower court against rates which they had put in, to stand.

And it is very interesting to note that not only was that decision given as to the Kentucky law, but that the Supreme Court of the United States instanced the Interstate Commerce law and made this declaration: that it would be wonderful to find a power so great transmitted by the legislative authority to any rate-making power, and specifically declared that no such power had been given to the Interstate Commerce Commission.

What, then, is the authority of the Interstate Commerce Commission? what the authority of the courts?

For a long time there was discussion in Congress on the Hepburn Bill, as to what authority should be given the Commission to make rates, and as to what right of judicial review should be given.

Some congressmen, who were very strong in their views that great power should be given to any rate-making body, were opposed to the granting of any judicial review. But it was recognized that if such review were not given, that the law would not be worth the paper on which it was written; that the very basis and foundation of this government is this: that all laws which take, which affect, which bear upon public or private interest must be subject to review in the court, in order that public rights may not be invaded, that private rights may not be taken from you, and that private property may not be wrongly interfered with.

So, the law finally came from the hands of Congress in this way not that the Commission shall inaugurate a scheme of rates, not that the Commission shall initiate any rate, but that—now mark you, this thought is important, and it is especially important in view of a late declaration made by the

Supreme Court of the United States—that the carrier shall have the right to make any and all rates. That is the privilege which has been left him, one he could always exercise, one not now taken away by the law.

In the language of the judges of this Circuit, there was given to the Interstate Commerce Commission the limited power—mark you, the limited power—of revising those rates, and that power can be called into exercise only when specific rates are complained of, and only in so far as a complaint embraces those specific rates.

The law declared, therefore, that when a rate is installed by a carrier, that one who feels himself aggrieved, may make a complaint of it, and if the Commission finds that that rate is unjust and unreasonable it may declare in lieu thereof what rate shall exist for the future as a maximum to be charged. And the Supreme Court of the United States, I think in the 209th, have said that the intention of the law was to leave the railways as the general managers of their own property; that the public—that is, the Commission (I use the words "that is, the Commission")—are not the general managers of the property, but they sit only as a body of review to revise the rate which has been inaugurated by the carriers.

Here comes the parting of the ways of the complainants and the Commission in this case, and it is important, as I think, in determining the decision which your Honor shall reach.

Mr. Holden called your Honor's attention to the fact that in the same case to which I have referred, the Supreme Court said that there is no presumption of wrongdoing on the part of a carrier when it has installed a rate. The Commission have acted on the theory that there is a presumption of wrongdoing on the part of the carrier, that is, to this extent: we say that if a rate has been a long time in force, there is a presumption that that rate was a reasonable rate, and if the carrier raises it there is a presumption—they do not use the words that the carrier has done wrong, but that is a necessary conclusion from what they have said—that there is a presumption that the carrier has fixed a rate which is unreasonable, and the burden rests on the carrier to show the reasonableness of the rate which he has installed in lieu of the rate which aforetime was in effect.

Now, if your Honor please, that position is, of necessity, wrong. When I am entitled to do a thing, when the law gives me the privilege to do a thing, when the law grants me the

authority to do a thing, when the law places upon me the burden of doing a specific thing, and I do it, there cannot be any presumption that in doing the thing which the law authorized me to do I have been guilty of a wrong. The Supreme Court of the United States says, and the Congress of the United States has declared, that it is the right, the privilege the duty of the carrier to handle its own rates. The carrier has the right to lower the rate, the carrier has the right to raise the rate. Therefore, it follows that the carrier in raising the rate cannot be presumed to have done that which was wrong, because he has done the thing which the law has committed unto his keeping.

But in these lumber cases, and if your Honor will read all the opinions closely, as doubtless you have, you will find that one underlying basis of the opinions of the Commission is this: that inasmuch as the rates prior to November 1, 1907, had been a long time in effect, then those rates were presumptively just and reasonable rates, and when the carrier raised the rates there was the presumption that those rates were unreasonable. I say, therefore, this: that inasmuch as the Commission started out with that false presumption, inasmuch as they left us pulling the laboring oar, inasmuch as they left us not on the level but gave us the hill to climb, inasmuch as they started out under the conception of the law that the rate in existence was reasonable and that the carrier had done wrong in raising it, that two results, to my mind, follow: First, there was an error in law upon the part of the Commission in giving undue weight to that presumption; and we say, second, that if we are incorrect in that, if we could be mistaken in that, that yet inasmuch as they did start out with that false presumption of law, that it did have its weight under the evidence which was introduced before them, and that the conclusion from that evidence, starting from the correct presumption of your Honor and of the Circuit Court, should be directly contrary to that at which the Commission arrived.

That brings me, then, to only one other point of difference in the law between the Commission and ourselves, and that is this: The Commission has taken the position all the while, in every case, so far as I know, certainly in this case, and in some other cases in which I have appeared, that when they fix a rate no court can disturb that rate unless it is found to be confiscatory, unless it is found that it runs counter to the provisions of the Fourteenth Amendment. And in describing what is confiscatory, in describing what is the taking of

property without due process of law, they have gone so far in the presentation of their argument in certain cases as to take this position: that if a rate is not reasonable in and of itself, that is to say, even if it is not remunerative, if it does not pay a fair return upon the cost of service, that that is a matter indifferent to be inquired into, because the carrier may make up a sufficient return on the remainder of the traffic carried by him.

That that cannot be the law, it seems to me, is evident from the reading of the statute itself, and the only true construction which can come from it and which we have already noted, is that the Commission cannot institute a body of rates, but passes only on the rates which are specifically brought before it. If that position be correct, then the Commission can make rate A below the cost of service when it is complained of, so rate B, so rate C, so rate D, and trim rate by rate until they have reached the point where the profits approach the vanishing point, and not until they have done that can you proceed to correct any rate put in by them.

But it is not necessary to appeal to the law, I take it, before your Honor, for in two opinions in this Circuit that position of the Commission has been overturned. There were two branches of the Cattle case; first, with reference to the terminal charge, in which it appears from the opinion that that point was argued by the Commission before the court, and they held this: that when it appeared affirmatively from the opinion of the Commission that any rate was unreasonable, immediately a question of law was raised, and without more the court would proceed to enjoin that rate. In the second branch of the Cattle case, which was heard before three of the judges sitting at St. Louis, the question then came on as to whether the contention of the Commission was right, as to whether they could declare a rate, and the carrier was obliged to accept that rate unless it proved to be confiscatory, and there again did this court repudiate the contention of the Commission, as was pointed out to you by Mr. Holden: that the rate was pre-considered in and of itself; that if it was found that the rate was unreasonable, there was no ipse dixit of the Commission which stood as an obstacle to the courts; that you would look to that evidence which was introduced before the Commission, if it was desired to introduce it before you; that, in addition to that, you could hear further evidence; that the whole question would come up de novo before the court, and it would decide for itself whether or not the

rate originally complained of, and now sought to be enjoined, was a reasonable rate.

So, again, there is that line of demarcation between the position of the Commission and our position; and again we say that in deciding as they have, in construing their powers as they have in believing that they had the right to fix this rate at what they would, and that so long as the carriers from the service rendered the shipper as a whole realized a sufficient return, that it was indifferent what a specific rate was,—I say that in acting upon that presumption it is fair to conclude that they have depressed the rate below what they otherwise would have done; and if it be not fair to conclude that, it at any rate again gives ground for approaching this question as a new question, in the light of all the evidence which shall be introduced before your Honor, and yourself determining whether the rate is reasonable.

Now, that is all, if your Honor please, that I have to say, and more than I intended to say. I desired to elaborate those views of the law just for a little bit.

I thank your Honor.

(A recess was then taken until 2 o'clock P. M.)

Mr. Teal: Do you desire us to make a statement now?

The Master: Why, if you care to.

Mr. Teal: There are certain features of it. I don't care to go into a discussion of the testimony at all at this time, but I think it might be well for the Master to understand the position that the Interstate Commerce Commission takes in this case and cases of this character. The suit is brought for two purposes: the first, testing the constitutionality—substantially testing the constitutionality of the act to regulate commerce in its most important particulars—that is, in the control of the Interstate Commerce Commission over rates for the future; the other relief sought is to have the court declare either that the rates fixed by the Interstate Commerce Commission are unreasonable—I presume using that word in the ordinary acceptation of the term rather than in the legal sense—and possibly joined with that, that the rates are so unreasonable as to be confiscatory in their nature, although from the pleadings, as I read them, no such allegation is made.

The position of the defendant in cases of this character is briefly this: there are two inquiries that a court can make respecting orders made by the Interstate Commerce Commission. The first inquiry is as to the lawfulness of the order

in itself. By that I mean whether or not the Commission has observed the rules, or rather the law, which are a prerequisite to the making of an order, as, for instance, Has a complaint been filed? Was notice given? Was there a hearing? Did the parties have the opportunity to offer their evidence? Were the proceedings conducted in due course of law and in accordance with the statute? That is one inquiry, of course, that the court could make, because if that were not so, the order would not be a lawful order. That is the first inquiry. Fortunately in this case there is no occasion for going into that branch at all, as there is no claim whatever that any acts taken by the Commission in this case were not duly taken and in accordance with law. There is no claim made, in the pleadings or otherwise, that every possible opportunity was not given the defendants, in the case before the Commission, to put before the Commission all of the testimony, and any testimony they desired to present affecting the issues as they were before the Commission.

The next question that this court has a right to inquire into is this: Do the rates, or will the rates fixed by the Commission's order be confiscatory within the meaning of Article 5 of the Constitution of the United States, in that they take in whole or in part property without due process of law or without compensation?

As the Interstate Commerce Commission views this matter, and as I think many courts do, this court is limited in its inquiry to these two propositions. Therefore, if that position is correct, the following necessarily follows: No testimony can be heard in this court at all excepting testimony going or tending to show that the rates are confiscatory within the meaning of the Constitution. Testimony cannot be introduced here or heard there simply going to the reasonableness of the rate, simply going to the question whether this court would have put in a 45-cent rate or a 42-cent rate. The evident desire of the carriers throughout the country and their purpose to make of the courts rate commissions would result not only in hopeless confusion, but would result ultimately in the defeat of any possible regulation, because the courts could not possibly attend to their legitimate business and also act as rate commissioners.

We also contend further that before any new evidence can be introduced here tending to show confiscation, or before any new evidence can be introduced here at all, it must have been first tendered to the Interstate Commerce Commission

for their consideration. Now, why? Under the act to regulate commerce no order made by the Commission is effective for a longer period than two years. This court, any court, any Commission, has the right, of course, under a rule that they may make themselves, to say that after a decision is rendered, or an opinion handed down, that you may have thirty days' time in which to file an application for a rehearing, or to open up the case for any purpose. But for the same reason, and the reason is perfectly apparent, there was written into the act to regulate commerce the right to every person appearing before the Commission to at any time during the life of that order apply to the Commission for a modification, and amendment, or indeed to have the order withdrawn and cancelled. At any time a carrier can go before the Commission, for instance, after a rate has been tried and its effect shown, newly discovered evidence, any fact or feature which they did not bring to the Commission, the law gives the right for them to bring that at any time before the Commission for consideration during the life of the order. No such right exists in any court, because after term time the order ends and is effective, and all that is left is the right to appeal.

In order to explain this a little bit, and to see the reason for this, the court will probably remember that in the early days of the act to regulate commerce—indeed, for eight years—it was presumed, and the courts acted upon the presumption that the act as originally passed gave to the Commission the power to fix rates. The Supreme Court finally held in a case that a power so great as that would have to be specifically granted. Not having been specifically granted, the Commission did not have the power, and it immediately went back to the level of what you might call a body with power to make recommendations.

Now, it is within the knowledge of every one what followed. A shipper would bring a case before the Interstate Commerce Commission. The carrier would introduce testimony or not, as he pleased. They would hear the testimony on one side; the Interstate Commerce Commission would make an order; they would promptly step over to the United States Court, secure an injunction as a matter of course, bring before that court testimony that the Interstate Commerce Commission never heard, that the complainant in that case never had an opportunity to meet, and the consequence was, and it was the result of that, that the Interstate Commerce Commission in many cases was reversed. As a result of that you heard

all over the country that the Interstate Commerce Commission as a body was of very little moment; that the courts constantly reversed them; but you never heard the other side of the story, that the Interstate Commerce Commission rarely had an opportunity to hear the testimony on both sides. The matter went along; the shippers were without a forum to appeal to; no court had a power to fix a rate; there was no place to which they could apply and secure any relief. The consequence was that the agitation continued until it became so great that it could not be denied. Then followed the amendment to the Hepburn Act. Now, what was the difficulty, and what was Congress curing? First, it certainly endeavored to give, wanted to give and intended to give the Interstate Commerce Commission the power to fix a rate for the future. That is certainly apparent. The next thing that they intended to do was they intended to give that Commission such powers and to make its orders so effective that when a shipper appeared before the Interstate Commerce Commission and the defendant appeared there, that before that Commission should be submitted all of the testimony bearing upon that case, so that the Interstate Commerce Commission should have before it, when it did act, all of the testimony, so that it could do as nearly as possible exact justice. There is no question as to that. There can be no question that that was the purpose.

Assume now in this case that this court concludes, passing upon the reasonablenes of a rate, a question of fact, a question that requires more or less expert knowledge—passing upon that question, supposing that this court should say that it believed that the rate fixed by the railroad companies to the Missouri river or to St. Paul was too high, that it believed that the rate fixed by the Commission was a little too low; that the rate on one side was unreasonably high, that the rate on the other side was unreasonably low; what is the court going to do? How is it going to furnish any relief?

It was just to avoid that sort of contingencies that Congress intended that when parties went before the Interstate Commerce Commission they went there to submit the cause and to submit it fully.

Now, you have an excellent illustration right in this case of the result of any other course of procedure. We are told here now that they intend to go into the valuation of all of these roads. When the court reads this testimony I will ask him to carefully scan the record to ascertain any testimony in-

troduced by the complainants here on the valuation before the Interstate Commerce Commission.

If valuation is such an important factor, and if valuation is so necessary to a proper consideration of this case, this court should say to the complainants, "Gentlemen, go back to the Interstate Commerce Commission and put in your valuation, let them consider it before you come to this court, and ask it to act as a Commission to fix rates or to pass upon rates." Why shouldn't it? What position is a shipper in? They have no appeal to the courts. They are bound by the decision of the Interstate Commerce Commission. The carrier is not. Any such action or any such final meaning being attached to the act to regulate commerce would as effectively wipe out regulation, would as effectively nullify it, as though there never was an act to regulate commerce passed. And no one knows this or appreciates it better than the carriers.

We will take up another question that was referred to here. It was suggested that they wished to make comparisons in rates, on testimony introduced by the complainants before the Interstate Commerce Commission. Why didn't they institute their comparisons at that time? There was ample time. Why should this court's time be taken up with instituting comparisons of rates, that is, when applied to a question of the pure reasonableness of the rate? Now, I am using the word "reasonable" in an ordinary sense. These cases that have been cited to the court—this Stickney case, this M., K. & T. Company case—when the court comes to analyze these decisions it will find these expressions as to the power of the court of looking into a rate where it shall be just and reasonable in the constitutional sense. What does that mean. It means that it cannot be confiscatory; but it never was intended under the law that the court should simply substitute its judgment as to whether a rate should be 50 cents or 49 cents or 60 cents or 55 cents, for the body that was expressly created by Congress for the purpose of passing upon these very questions. Therefore, when the testimony is offered in this case we intend to object to the introduction of any new testimony, or the introduction of any testimony at all, for any purpose, excepting testimony that may be introduced which may tend to show that the rates are confiscatory; that if that is new evidence we shall object to its introduction, because, under the law, we believe that that must first be submitted to the Interstate Commerce Commission, that these cases are not to be tried piecemeal, that the old evil and the vice of the old law

that was intended to be changed by Congress, shall not be gradually renewed and gradually created and gradually developed until it becomes a vice under the new law.

These questions, without going into that further, have been passed upon by other courts. There is a case now pending in the Supreme Court of the United States in which these very questions are being raised, which will be heard at the next October term of court, but I take it at this particular time there is no occasion for reading to the court from decisions either as to the constitutionality of the act or features of the character that I have referred to.

I want to make one short statement to the court respecting the issues that were tried before the Interstate Commerce Commission—and a very short one, too—because if it becomes necessary for us to introduce evidence we probably will go more at length into it. But there is one thing that at this time I wish to impress, if I can, upon the mind of the courts in considering this testimony. There are three trans-continental lines involved. By trans-continental lines I mean lines reaching from the Missouri river to the Pacific coast. They are the Great Northern, the Northern Pacific, and what is known as the Harriman line, consisting of the Union Pacific, the Short Line, and the Oregon Railroad & Navigation Company. Now, while the testimony in this case is being taken and is applicable to these three cases, it should be distinctly understood that by conceding this we do not concede at all that the testimony taken, we will say, in behalf of the Northern Pacific is at all applicable to the Union Pacific system, or that conditions on the Great Northern (because testimony may be taken there) are applicable to the Northern Pacific. To illustrate: the lumber traffic on the Northern Pacific was, I think, 32 or 35 per cent.—some place in there—in volume of the whole traffic, when at the same time, as I remember, on the Harriman system it was but 9 per cent. You can readily see, therefore, that a question, assuming that that question existed, of empty car movement on the Northern Pacific might not at all apply to the Union Pacific system. You might also, and would understand, that, for instance, a car of lumber going out from Tacoma, or going out from Everett or Seattle over the Northern Pacific and Great Northern as of the time this case was tried, over the Cascade mountains, went out under very different conditions from what it went out of Portland up the Columbia river. So the mere fact of the testimony being taken together, and being used, as you might say, in common, we want it very distinctly understood that we don't want

the different roads, so far as we are concerned, or have the testimony applicable to the different roads applied indiscriminately.

Another illustration, to show why that is very important: when the rates were advanced the principal reason given by the Northern Pacific road and by the Great Northern road was that the empty car movement west-bound, which it was alleged was caused by the demand to move lumber east-bound, was the principal ground on which the rates were advanced by the Northern Pacific road. Now, on the other hand, the only testimony introduced before the Interstate Commerce Commission affecting the Harriman roads, their reason for the advance was that the lumberman's profit could stand it, and that it was largely experimental, and if it did not work it could be taken out.

Mr. Dillard: That is Mr. Teal's conclusion.

Mr. Teal: I argued one case before the Circuit Court of Appeals, in San Francisco, and between Mr. Cotton, Mr. Dillard, and Mr. Dunne I had a very hard time between reading the record and telling what was the real issue. Now I state that, without any possibility of dispute, on record 2, page 407, it was testified that Mr. Miller, the only witness that I remember who was introduced on behalf of the Harriman System in this case, testified his reasons were—now, he didn't testify to this, but it was testified to, and it was never denied—and that was a meeting, I might say, at which Mr. Harriman was present, and Mr. Harriman never denied it, and it was proven by two or three witnesses who were present—that that was stated at a meeting of lumbermen with Mr. Harriman personally, in the City of Portland, and has never been denied—first, that the lumber business was prosperous and could stand the advance in rates; second, the rates were largely experimental, and if they didn't work they would be taken out.

My only purpose in referring to that now is to show how important it is to keep these different roads separate in one's mind in considering this case.

There is another thing which makes it equally important, that is not generally understood, and that it that the advance rates on the Northern Pacific, as put in, average lower than the old rates on the Harriman road before they were advanced. So that there is very decided differences between the position of these different roads, both as to the alleged empty car movement, the reasons for the advance, the physical conditions, the earnings, etc., which, if we have to go into, we will.

Another thing that I desire to call the court's attention to, without going into all of the feature of the advances, which were very fairly stated by Mr. Holden—of course they were peculiar cases. For instance, an advance from Portland to Denver of 25 per cent. on fir lumber was a little jolty in its nature, particularly after that rate had been in for a great many years, and they were right there in competitive territory with the yellow pine lumber, and everybody fighting for business. But if the time ever comes to discuss these rates and the reasons for them, it will be time enough to take it up then.

But there is one thing also that in the consideration of rates I think Mr. Holden omitted to state to the court; the gradual disappearances of the Minnesota forests was pointed out and the reasons given for the original 40 cent rate to St. Paul illustrated, and the fact was intimated that now through both the Dakotas and Montana, the treeless section of this country, it was in such a condition that there was no longer the competitive condition between the lumber, and of course, inferentially, therefore, these treeless sections were subject to the prices that might be inaugurated by the lumbermen, and that their profits were so large that they could at any rate give up a little bit of it to the transportation people.

Now, the effect of that argument, and the court will find, if it gets to trying rate cases (which may the Lord preserve it from) that there is, generally speaking, before the court two interests; one the carrier, the other the shipper, and generally speaking, the presumption is indulged in that if the carrier is satisfied and the shipper is satisfied surely everybody ought to be happy. But there is one element omitted there that is more important than either the carrier or the shipper, and that is the public, who is not always represented at these hearings. The question as to whether or not a lumberman, or any one else, for that matter, is making extraordinary profits or extraordinary losses does not enter into the rate question. The question is a simple one—is a fair and reasonable price being charged for the service that is rendered, because the carrier and the shipper, even if they had the power to enter into a conspiracy—one by the advance in prices, the other aiding the advance through an advance in rates, of imposing conditions and purchasing prices upon the treeless section of the country, or upon any other necessary of life, is a matter that has to be considered. So it is not a question of whether or not the forests of Minnesota are gone, and therefore more can be charged—I mean from that standpoint—and the court will find, as I have said, that in many of these

cases it just simply simmers down to two interests—the carriers pulling on one side for all they can get and the shippers pulling on the other side for all they can get, and in the shuffle the public is very often lost sight of.

Now, there were some criticisms made, perhaps justly, of the opinions and reports of the Interstate Commerce Commission in these cases, and what they said and what they didn't say. I do not see anything to be gained particularly at this time by presenting my views as to what the Commission said. The rates that were in effect would indicate pretty strongly that the views were pretty thoroughly understood by the carriers, and they are written in English language, and they are written plainly, and copies of them are attached to each of the answers in these cases, so that the court will have ample opportunity to see for itself what the Commission said in these cases. And the court will find that the most careful and painstaking examination of these cases was made that could possibly be made in any case; in fact, any testimony bearing upon the question at issue, which either side desired to present, was presented to and considered by the Commission.

Without entering into any further argument of this matter, or statement, there is one other feature that I find a little difficult to meet as I pass from case to case. In the Illinois Central, which was referred to by Mr. Holden as a model road, on the question of the even balancing of traffic and the fact that lumber was rather a choice commodity for that road to handle, I presume on account of the tremendous movement south, before the case is through with I shall see that the court receives a report in that case, as it may be necessary to show the facts; and you will find that in that case the chief justification for the advance of two cents in the yellow pine cases was the movement of empties south; just precisely as the chief reason for the advance in this case was given as the empty movement west. I will not take up the court's time, because it is apparently not altogether necessary to do so, except to just illustrate as I go along; and, as the Illinois Central Railroad Company is such a wonderfully well balanced traffic road, the Oregon Railroad & Navigation Company out in our state has a very much less percentage movement of empty traffic, of empty car movement, than the Illinois Central has. So that in these various cases there are a good many things to consider; and at this time, as I say, I do not think that it is important to go further into our views of what the testimony will be; but, of course, if it comes to

the point that we are required to introduce testimony, then we will outline the testimony we shall introduce and its purpose. I thank you.

Mr. Holden: Are you going to say anything, Mr. Wimbish?

Mr. Wimbish: No; I don't care to make a preliminary statement.

Mr. Holden: Then we will ask that Mr. Cooper be sworn.

THOMAS COOPER was then duly sworn as a witness on behalf of the complainants.

Mr. Wimbish: May it please the court, we desire to enter an objection to the taking of any testimony in this case, on the ground that the finding and order of the Interstate Commerce Commission as to the reasonableness of a rate is the exercise of a discretion conferred by law upon a tribunal—an expert tribunal—informed by experience, and that the finding of that tribunal is conclusive on that question of fact—the reasonableness of a rate being a pure question of fact; and that judicial review is limited to a consideration as to whether the Commission has passed an order which will necessarily offend constitutional guaranties, by the taking of property without due process of law or just compensation. In other words, we insist that the discretion of the Commission in condemning rates and in fixing maximum rates is not subject to review in the courts unless constitutional principles be offended; and therefore we object to any evidence relating to the mere reasonableness of the rate as a traffic proposition.

Courts will not indulge in the administrative work of determining whether a rate is just and reasonable as between the carrier and the shipper. That is quasi-legislative and administrative. And from the Regan case on the Supreme Court and every Circuit Court and every Circuit Court of Appeals has consistently followed that principle, and they have never gone into the question of the mere reasonableness of a rate as between the carrier and the shipper. But the court will inquire whether rates made by a State Commission or under federal authority, or any other governmental authority, are so palpably and unreasonably low as to necessarily amount to confiscation; and if the court finds them to be so, the court will, of course, enter a decree accordingly.

Now, if the purpose of this testimony is to show the value of either of these complainant lines, for the purpose of deducing the inference of confiscation, then, we object to it, first, on the ground that such testimony must, under the Hepburn law, be first presented to the Interstate Commerce Commission. While that Commission is not constituted to try pure questions of law, yet they are entitled to have all the facts bearing upon the reasonableness of the rate before them, in order that they may have an opportunity of doing exact and equal justice; and if a rate is so low as not to afford the carrier the cost of the service in that particular rate, or if as one of a body of rates it is so low as to deprive the carrier of a fair return upon its legitimate investment, then that rate is unreasonable and the Commission ought to have an opportunity of knowing it.

We would object upon the further ground that the bills in these cases present no allegation of confiscation. I read the bills in vain to find anywhere even so much as a distinct intimation that all of the revenue derived from all of the traffic on either of these complainant lines is not sufficient to yield even a generous return upon the value of their investment.

Now, there is an allegation that these lumber rates are abnormally low—so low that while the carriers cannot determine and therefore declare the cost of the service exactly, yet they do say that the rates do not yield the cost of the service and a fair return upon the investment. Now, our position is that confiscation cannot be predicated on a particular rate, but only for the entire body or schedule of rates. If a rate is so low that it will not yield the cost of service, then ordinarily that rate would be unreasonable, but not necessarily confiscatory; and a rate may be so low as not to yield its proportion of the yield derived from all traffic, and yet that rate is by no means confiscatory, because what the railroads have a right to ask is that from the whole revenue derived from their entire business that they be allowed a fair return upon the true and legitimate value of their investment, and hence, sir, we desire to object to any testimony in this case.

Mr. Dillard: Mr. Wimbish, if you don't object, for my own information—I think I followed you closely. I understand your position to be this: that if the rate is considered in and of itself and pays anything beyond the cost of service, that it must stand, unless from the whole body of the rates it may be concluded that there is confiscation of the carrier's property or revenue. Did I follow you right?

Mr. Wimbish: I think you have stated it substantially,

Mr. Dillard; but, in order that I may not be misunderstood, I will state it again.

Mr. Dillard: Well, if you will be so good, please. It may help us in the further progress of the case.

Mr. Wimbish: That a Commission vested with the power of fixing either absolute or minimum rates, may fix a rate on a particular commodity, which rate, if it yields the cost of service and anything over is not confiscatory. In other words, that confiscation cannot be predicated on a particular rate, even though the rate does not pay the cost of service. I apprehend it does not come within the general definition of confiscation. It is, of course, a reasonable rate, although the carriers may, perhaps, if they see fit, adopt a rate that will not even pay the cost of the service; but I do not think a Commission can or should impose such rate.

Mr. Dillard: But even then, if I follow you, if the whole body of rates does pay a reasonable and fair revenue, since that rate is not confiscatory, and since the court does not have the power of fixing rates, it is not within the purview of the law that the court can enjoin the order fixing that particular rate.

Mr. Wimbish: On the ground of confiscation.

Mr. Dillard: Well, on any ground.

Mr. Wimbish: Oh, no.

Mr. Dillard: Do you think the court can enjoin that rate on any ground?

Mr. Wimbish: I don't think the court has power to enjoin rates on any ground except confiscation, anyway.

Mr. Dillard: Well, that is what I understood.

Mr. Donnelly: I suppose the objection will be noted.

The Master: Yes.

Mr. Donnelly: And we will proceed with the testimony.

Mr. Wimbish: We have some of the objections reduced to written form.

The Master: Perhaps you had better read them right into the record, then.

Mr. Teal: I would like to have these read in the record, if the court please, because they are more specific, if you don't object.

> The defendant objects to the introduction of any new or additional evidence affecting the reasonableness of the rate fixed by order of the Commission in the cause referred to in the complaint, on the following grounds:

1.

A. The reasonableness of a rate being a question of fact, the determination of which is under the law committed to the discretion of the Interstate Commerce Commission, its finding thereon is conclusive, unless the rate fixed is equivalent to a confiscation of property within the meaning of the Fifth Amendment to the Constitution of the United States.

B. If the new or additional evidence offered is for the purpose of showing the unreasonableness of the rate fixed by the order in question, the complainants, under the act to regulate commerce and amendments thereto, must first present such facts to the defendant for its consideration; and such has not been done in this case.

2.

No evidence is admissible in a trial of this case that would not tend to show confiscation of the property of the complainant, and no allegations of facts appear in the complaint that show or tend to show that the effect of the rates fixed by the order complained of would confiscate the property of the complainants or any of them.

3.

No new or additional evidence is admissible for any purpose unless it affirmatively appears that complainants have first presented, or offered to present, the same to the defendant for its consideration, and have applied to said defendant for a suspension, modification or amendment, in whole or in part, of the order complained of.

4.

No new evidence or additional evidence is admissible for any purpose which was within the knowledge of the complainants at the time of the trial in the proceedings before the defendant in which the order complained of was made and entered, and which they failed or neglected to present to said defendant at the time of said hearing, nor any new evidence growing out of any facts, matters or things which may have arisen since that hearing, except such facts, matters or things are first presented by application for re-hearing or otherwise to this defendant, which has not been done in this case.

5.

No new evidence or additional evidence is admissible for as much as complainants in their said complaint herein do not set forth any reason why any of such matters or things could not be or were not presented to the defendant, nor that the complainants, or either of them, had or have in any manner been prevented from presenting to the defendant, for its consideration, any of three matters or things in the complainants' amended bill set forth, and complainants have failed to make application to defendant for re-hearing of said matter on account of such facts, or to have said order suspended, set aside, or modified.

6.

No new evidence or additional evidence is admissible for any purpose, unless it appears from the complainant either that the defendant declined to hear said testimony at the hearing and proceeding in which the order complained of was made, or that it appears since said hearing the complainants have offered to present the same to the defendant for its consideration and it has declined to hear the same, or has heard the same and refuses to modify, suspend or amend, in whole or in part, the order complained of; and no such evidence is admissible under any circumstances, unless the same would show or tend to show that the effect of the order would be to confiscate the property of the defendant.

Mr. Donnelly: Now, it may be understood, Mr. Teal, that all of the testimony may be subject to those objections.

Mr. Teal: Yes.

Mr. Donnelly: Then we will go right straight along.

Mr. Wimbish: Will your Honor rule upon the objections?

The Master: No, I will not.

Direct Examination.

By Mr. Donnelly:

Q. Mr. Cooper, state your full name.

A. Thomas Cooper.

Q. Your residence.

A. St. Paul.

Q. What connection have you with the Northern Pacific Railway Company?

A. Land commissioner.

Q. How long have you been connected with the Northern Pacific properties?

A. Since June, 1882.

Q. And in what capacities have you been connected with that property since that time?

A. I entered the service of the Northern Pacific in the month of June, 1882, as clerk in the construction department, located at Brainerd, Minnesota. I continued in that department until June 1, 1886, when I was promoted to be chief clerk in the operating department located at Minneapolis. I was there one year and was then moved to Tacoma, Washington, occupying the position of chief clerk in the construction department. I was at Tacoma one year, leaving the service of the company about April, 1888. I was absent from its service until July 1, 1889; re-entered the service then as chief clerk in the construction department, located at Helena, Montana; remained in that capacity until May 1, 1890, when I went to South Bend, Washington, as general manager of the Northwestern Land & Development Company—a company which owned the town site at that point, and in which company the Northern Pacific owned the controlling interest. I occupied that position until September 1, 1894, when I was appointed assistant general manager of the Northern Pacific Coal Company, also a subsidiary corporation of the Northern Pacific, located at Tacoma, Washington. In June, 1895, I was appointed western land agent for the Northern Pacific, located at Tacoma, Washington, and occupied that position until July 1, 1901, when I was appointed assistant to the president, still located at Tacoma, Washington, and occupied that position until April 1, 1902, when I was appointed general manager of the Northern Pacific, and moved to St. Paul. I occupied the position of general manager until April 1, 1904, when I was appointed to my present position of land commissioner, in which I have continued since, with residence at St. Paul.

Q. What are the duties of the land commissioner, Mr. Cooper?

A. The land commissioner has charge of the company's land grant, also of its right-of-way, station grounds, and terminals, the purchase of all new right-of-way and all real estate that the company requires; has charge of the leasing of the right-of-way and other property of the company, the sale of it when any of it is sold. In other words, he has general charge of the company's real estate, whether it is land grant or operating property.

Q. Are its duties such as to familiarize you, or the person who holds the position, with the values of the real estate of the company?

A. Yes, sir. I have the purchase, or pass upon the purchase, of all of the property that the company acquires. And in connection with the leasing of its property, which is made on the basis of six per cent of its value, I necessarily have to become familiar with its value for that purpose.

Q. Have you prepared a statement, Mr. Cooper, showing the property purchased by you as land commissioner since you have held that position?

A. I have.

Q. That covers the period from December, 1904, down to the present time, does it?

A. That is correct. While I was appointed land commissioner on April 1, 1904, I did not have charge of the operating property of the company until December 1, 1904. Therefore, this statement covers the period that I have been land commissioner and also have had charge of the operating property of the company.

COMPLAINANT'S EXHIBIT 1 (COOPER).

SCHEDULE OF PROPERTY PURCHASED BY THOMAS COOPER, LAND COMMISSIONER, NORTHERN PACIFIC RAILWAY COMPANY, FROM DECEMBER 1, 1904, TO APRIL 7, 1909.

Location.	For What Purpose.	Cost.
St. Paul, Minn.	Additional Terminal Property	$437,626.52
Minneapolis, Minn.	Right of Way for New Passenger Line	181,708.17
Minneapolis, Minn.	Additional Terminal Property	59,914.34
St. Cloud, Minn.	Additional Station Grounds	2,602.50
Darling, Minn.	Gravel Pit	3,537.50
Superior, Wis.	Additional Terminal Property	226,670.32
Crow Wing County, Minn.	Iron Ore Property	82,220.00
Brainerd, Minn.	Tie Treating Yard	1,255.55
Staples, Minn.	Additional Terminal Property	31,012.97
Wadena to Glyndon, Minn.	Right of Way for Line Changes	178,491.87
Detroit, Minn.	Depot Site	10,693.50
Dilworth, Minn.	New Terminal Yard and Townsite	41,636.85
Casselton Branch, N. D.	Additional Right of Way	1,553.35
Magnolia, N. D.	Reservoir	2,019.80
Oriska, N. D.	Reservoir	19,011.54
B. F. & I. F. Ry. Co.	Right of Way for New Line	48,475.47
Alta to Berea, N.D.	Right of Way for Line Change	44,413.87
East Grand Forks, Minn.	Additional Right of Way	11,615.75
Jamestown, N. D.	Additional Terminal Property	5,268.88
Edgeley to Streeter, N. D.	Right of Way for New Line	8,347.58
Denhoff to Turtle, N. D.	Right of Way for New Line	4,807.01
Edgeley, N. D.	Additional Station Grounds	1,516.34
Sykeston Branch, N. D.	Right of Way for Snow Fences	1,044.74
Ladoga, N. D.	Gravel Pit	6,431.65
Sterling, N. D.	Reservoir	7,466.30
McKenzie, N. D.	Reservoir	2,501.75
Mandan, N. D.	Additional Terminal Property	18,680.84
Missouri River Branches, N. D.	Right of Way for New Lines	85,440.78
Sweetbrier, N. D.	Reservoir	1,010.76
Western Dakota Ry. Co.	Right of Way for New Line	6,744.67

Location.	For What Purpose.	Cost.
Glenullen, N. D...	Reservoir	$ 3,953.81
Hebron, N. D.....	Reservoir	857.68
Glendive, Mont....	Additional Terminal Property	6,301.55
Laurel, Mont.....	New Terminal Yard	40,308.81
Big Timber.....	Stock Yards	575.00
Shields River Valley Ry.....	Right of Way for New Line	8,059.16
Livingston to Muir, Mont.....	Right of Way for New Line	11,156.75
Butte, Mont.....	Additional Station Grounds	17,618.02
Garrison to Missoula, Mont.....	Right of Way for Line Changes	184,876.98
Turah, Mont.....	New Terminal Yard	9,062.99
Paradise to St. Regis, Mont.....	Right of Way for New Line	19,215.55
Paradise, Mont....	New Terminal Yard and Townsite	47,937.52
Belknap to Tuscor, Mont.....	Right of Way for Line Change	37,486.80
Noxon, Mont.....	Right of Way for Line Change	982.31
Wallace, Idaho....	Right of Way Across Ore-or-no-go Mill Site	1,000.00
Heron, Mont.....	Right of Way for Line Change	131.10
Sand Point, Idaho.	New Terminal Yard	8,939.80
Yardley, Wash....	New Terminal Yard	20,105.56
Spokane, Wash....	Additional Terminal Property	9,137.54
Palouse Branch, Wash.....	Additional Right of Way	3,512.73
Lewiston, Idaho...	Additional Station Grounds	83,833.82
Kennewick Northern Ry. Co.....	Right of Way for New Line	2,265.60
Culdesac toGrangeville, Idaho.....	Right of Way for New Line	100,084.25
Spokane.....	Right of Way and Terminals for New Line	99,610.27
Spokane to Pasco, Wash.....	Right of Way for New Line	749,344.74
Texas Ferry Branch, Wash...	Right of Way for New Line	39,427.07
Pasco.....	Right of Way and Terminals for New Line	55,443.07
Kennewick to Vancouver, Wash...	Right of Way for New Line	1,041,648.76
Vancouver to Portland, Ore.....	Right of Way for New Line	189,109.38
Portland, Ore.....	New Terminal Property	267,500.00
Vancouver, Wash..	Additional Terminal Yard	150,046.14

Location.	For What Purpose.	Cost.
Centralia to Vancouver, Wash.	Right of Way for Line Change	$ 72,162.58
Kelso to Cosmopolis, Wash.	Right of Way for New Line	300,773.80
Tacoma to Tenino, Wash.	Right of Way for New Line	1,343,368.49
Tacoma, Wash.	Additional Station Grounds	528,778.68
Tacoma, Wash.	Additional Shop Grounds	46,798.45
Seattle, Wash.	Outside Yard	67,502.03
Seattle, Wash.	Right of Way for New Lines	444,712.10
Snohomish, Wash.	Right of Way for Channel Change	15,006.70
Bellingham, Wash.	Additional Station Grounds	91,616.41
Aberdeen, Wash.	Additional Right of Way	5,986.72
Hoquiam, Wash.	Additional Station Grounds	21,532.26
		$7,680,892.15

Q. This statement, Exhibit 1, contains, as I understand it, a list of the real property purchased by you as land commissioner of the Northern Pacific Railway Company since December 1, 1904.

A. That is correct.

Q. Showing in the first column the place where the real estate is situated; in the second column the purpose for which purchased; and in the third column, the price paid for it?

A. That is correct.

Q. And the total of these purchases during the 4-1/3 years equals some $7,680,000?

A. That is correct.

Q. This property has been purchased in every state through which the Northern Pacific Railway runs, I believe, as shown in the statement?

A. Yes, sir, that is correct.

Q. What connection have you had with the purchase of the property?

A. All of the property has been purchased under my direction, and the purchases passed upon by me. That is to say, as a rule we take contracts for the purchase of property. These contracts are negotiated under my direction by my assistants and then passed upon by me, and a voucher prepared and approved by me. So that in practically every case, perhaps, every cent of money that is represented in there has been paid out on vouchers bearing my approval. And

most of the property I have seen before it was purchased; that is to say, when I am instructed to buy right-of-way for a new line I go over it in advance of any purchases, unless I am previously familiar with the country, to size up about what prices we should pay for the right-of-way. The same way with additional terminal property. For instance, the first item that appears on that list is "additional terminal property at St. Paul." That property was gone over by myself before any purchases were made, and all sized up as to what its value was and what prices we would likely have to pay for it. The same follows with the next item of the new passenger line at Minneapolis. I employed a real estate man of Minneapolis to buy that property, but before any of it was bought I walked over the line with him and sized it up in the same way that I speak of. And so on down along the line. There are some items there that I have not personally visited; for instance, gravel-pit at Darling, Minnesota—such small items as that. I have not the time, of course, to go and look at every piece of unimportant property like that. That particular item of that gravel-pit, I sent one of my men up there to buy it, and took his judgment on the price, which, however, I checked by my knowledge of the country and about what the property ought to be bought for. So that, generally speaking, throughout the whole list of property that has been purchased I have personally passed on every purchase and decided whetner the price was fair and reasonable, and in most of it based on a personal knowledge of the property.

Q. And in that way, I assume, you have become familiar with what it costs a railway company, or has cost a railway company, to acquire real estate of the character needed along the line of the Northern Pacific Railway Company?

A. Yes, sir.

Q. How familiar are you with the Northern Pacific property as a whole, Mr. Cooper? How much of it have you gone over?

A. I have been over every mile of the Northern Pacific system; not once, but frequently, excepting a new line that we recently constructed from Hoquiam, along the Pacific coast. We call it the Peninsula branch. I started once to go over that, and we had a landslide and I had to turn back. I was just trying to think the other day—I cannot recall any other part of the system that I have not been over, and I have been over most of it very repeatedly.

Q. Including both main and branch lines?

A. Including both the main line and the branches. While

general manager, of course, it was part of my work to visit all parts of the line frequently; and prior thereto and subsequent thereto I have made many trips. For instance, since last December I have been three times to the Pacific coast, and, generally speaking, I get in about four or five or six trips a year to the Pacific coast now. Not only do I travel over the rail system, but I have to make a great many excursions out into the country tributary to our line in connection with our land grants, and also in looking up possibilities for new lines. Last year I traveled 1100 miles, in automobiles, in Montana and North Dakota, on just such missions as I have indicated. This year already I have traveled 450 miles in automobiles, in the state of Washington, last month.

Q. So that over a considerable portion of the line you have been either on foot or in vehicles other than railway trains?

A. Yes, that is true west of the Missouri river—well, no; that is true west of the Red river. I have not made any trips off the line in Minnesota or Wisconsin. In North Dakota I have both east and west of the river, also in Montana. I made no trips off the line in Idaho other than one trip up in the St. Joe country and also up on the Camas prairie before we built that line. I made two trips to Grangeville before the line was constructed. In Washington I am quite familiar with it, both on and off the line.

Mr. Dillard: May I ask just one question?

Mr. Donnelly: Certainly.

By Mr. Dillard:

Q. Your exhibits there, No. 1, represents property still in the ownership of the railway and used by it for railway purposes?

A. No; no, there is some of that property that does not belong to the Northern Pacific. It is property, however, that I purchased. In other words, there is an item that I just see, Grow Wing County, Minnesota, iron ore property. That is a property that has been purchased by the Northwestern Improvement Company, which is a subsidiary corporation of the Northern Pacific, and of which company I am land commissioner. On this statement also you will find the Spokane, Portland and Seattle right of way which I purchased. In other words, this Complainants' Exhibit 1 has no reference whatever to the property of the Northern Pacific; it is simply to show property that I purchased for the Northern Pacific and these other companies. It is all property, however, along the line of the Northern Pacific, and its purpose is simply to show my

familiarity with the property and values along the line of the Northern Pacific.

Q. A good part of it is actually used now by the Northern Pacific alone, is it not?

A. Yes, that is true. The largest single item that is not used by the Northern Pacific is the right of way of the Spokane, Portland and Seattle.

Q. That is used by that railway, however, isn't it?

A. Oh, yes, yes. The Northern Pacific owns a half interest in that railway.

Mr. Donnelly: Is that all, Mr. Dillard?

Mr. Dillard: That is all I wanted to inquire about.

The Master. You say the purpose of this exhibit is to show Mr. Cooper's qualifications?

Mr. Donnelly: That is to show Mr. Cooper's qualifications principally, your Honor. It is not for the purpose of showing value. That will be covered by another statement.

Br. Mr. Donnelly:

Q. Have you prepared a statement, Mr. Cooper, showing the estimated cost at the present time of acquiring the real estate used in connection with the operation of the Northern Pacific system?

A. I have.

Q. Will you produce that, and we will have it marked Cooper Exhibit No. 2, giving Mr. Teal one.

Paper marked Complainants' Exhibit 2 (Cooper).

COMPLAINANT'S EXHIBIT 2—(COOPER).

NORTHERN PACIFIC RAILWAY CO.

GENERAL SUMMARY OF VALUATION ON BASIS OF COST OF REPRODUCTION OF RIGHT OF WAY, STATION GROUNDS AND TERMINALS ON OPERATED LINES.

State.	Acres.	Right of Way and Station Grounds.	Terminals.	Total.
Wisconsin	3,421.19	$ 414,619.00	$ 1,904,577.92	$ 2,319,196.92
Minnesota	23,929.73	4,098,555.12	24,509,679.46	28,608,234.58
North Dakota	31,876.00	8,848,155.50	2,719,611.46	11,567,766.96
Montana	51,803.82	5,505,316.50	3,807,885.78	9,313,202.28
Idaho	7,100.81	1,063,832.00	1,095,918.00	2,159,750.00
Washington	38,658.54	9,203,123.50	50,483,222.31	59,686,345.81
Oregon	1,378.55	558,080.70	481,305.00	1,039,385.70
Totals	158,168.64	$29,691,682.32	$85,002,199.93	$114,693,882.25

RECAPITULATION OF TERMINALS.

Location.	Acres.	Av. Value per Acre.	Total Value.
Superior, Wis.	949.12	$2,006.68	$1,904,577.92
Stillwater, Minn.	30.46	8,346.23	254,226.00
Staples, Minn.	63.69	5,821.95	370,800.00
Brainerd, Minn.	220.28	3,203.21	705,603.50
Duluth, Minn.	598.72	9,148.48	5,477,377.14
St. Paul, Minn.	687.56	17,680.41	12,156,343.89
Minneapolis, Minn.	292.60	18,951.91	5,545,328.93
Fargo, N. D.	108.70	9,807.31	1,066,054.68
Valley City, N. D.	78.59	5,709.77	448,730.90
Jamestown, N. D.	211.64	2,308.92	488,659.88
Mandan, N. D.	423.31	1,691.82	716,166.00
Billings, Mont.	92.50	14,902.69	1,378,498.90
Helena, Mont.	223.50	1,044.54	233,456.00
Missoula, Mont.	125.75	7,531.74	947,116.62
Butte, Mont.	110.85	11,265.80	1,248,814.26
Wallace, Idaho	86.69	6,000.00	520,140.00
Lewiston, Idaho	59.12	9,739.14	575,778.00
Spokane, Wash.	422.31	19,201.83	8,109,128.62
Pasco, Wash.	129.18	2,053.33	265,249.00
North Yakima, Wash.	74.16	17,195.01	1,275,182.00
Tacoma, Wash.	530.55	21,724.11	11,525,728.89

RECAPITULATION OF TERMINALS—Cont'd

Location.	Acres.	Av. Value per Acre.	Total Value.
Seattle, Wash.	432.60	$61,984.48	$26,814,488.18
Aberdeen, Wash.	50.67	9,382.27	475,400.00
Hoquiam, Wash.	28.85	13,669.46	394,364.00
Everett, Wash.	124.68	3,000.00	374,040.00
Bellingham, Wash.	71.69	4,610.18	330,503.82
South Bend, Wash.	34.42	8,233.59	283,400.00
Walla Walla, Wash.	31.38	11,168.39	350,464.00
Vancouver, Wash.	35.24	8,095.17	285,273.80
Portland, Ore.	18.38	26,186.34	481,305.00
Total terminals	6,347.19	$13,392.09	$85,002,199.93

WISCONSIN.

District.	Acres.	Av. Value per Acre.	Total Value.
Ashland to State Line, excluding Superior	1,914.02	$167.04	$319,726.50
Washburn Branch	415.38	182.79	75,927.00
Grantsburg Branch	142.67	132.93	18,965.50
Total excluding Superior	2,472.07	$167.72	$414,619.00
Superior Terminals	949.12	$2,006.68	$1,904,577.92
Total Terminals	949.12	$2,006.68	$1,904,577.92
Grand Total for State	3,421.19	$677.89	$2,319,196.92

MINNESOTA.

District.	Acres.	Av. Value per Acre.	Value.
West Duluth to White Bear	2,340.48	$205.89	$481,870.05
Fond du Lac Branch	236.15	428.58	101,209.20
Carlton Yards	57.04	124.00	7,073.25
Cloquet Branch	84.97	341.55	29,021.10
Miller Branch	61.06	105.00	6,411.30
Grantsburg Branch	191.44	50.83	9,731.10
Taylors Falls Branch	253.23	330.03	83,574.00
Stillwater Branch, excluding Stillwater	120.98	383.67	46,416.00
State Line to Staples, excluding Brainerd	4,400.67	83.64	368,075.20
White Bear to St. Paul	172.27	907.11	156,267.50
Minneapolis-White Bear Branch	142.19	533.43	75,847.50
Northtown Jct. to Staples	1,463.41	273.80	400,686.25
Brainerd to Little Falls	384.48	95.67	36,785.25
Little Falls to Morris	1,259.55	172.62	217,426.80
Staples to Moorhead, excluding Staples	4,993.02	219.95	1,098,212.30
Fergus Falls Branch	1,111.56	242.66	269,728.65
Red River Branch	1,442.89	316.92	457,272.95
Red Lake Falls Branch	793.01	124.82	98,984.40
Keystone Branch	74.08	120.00	8,889.60
Minnesota and International Ry. (70%)	1,911.94	50.00	95,597.25
Big Fork and International Falls (100%)	542.00	89.44	48,475.47
Totals, excluding Terminals	22,036.42	$185.94	$4,097,555.12
Terminals.			
Stillwater	30.46	$8,346.23	$254,226.00
Staples	63.69	5,821.95	370,800.00
Brainerd	220.28	3,203.21	705,603.50
Totals, excluding Terminals	22,036.42	$185.94	$4,097,555.12
Terminals	314.43		1,330,629.50
Duluth (including Union Depot Property)	598.72	9,148.48	5,477,377.14
St. Paul	687.56	17,680.41	12,156,343.89
Minneapolis	292.60	18,951.91	5,545,328.93
Total Terminals	1,893.31	$12,945.41	$24,509,679.46
Grand Total for State	23,929.73	$1,195.47	$28,607,234.58

NORTH DAKOTA.

District.	Acres.	Av. Value per Acre.	Total Value.
Fargo to Jamestown, excluding Fargo and Valley City	3,975.79	$300.00	$1,192,737.00
Jamestown to Mandan, excluding Jamestown and Mandan	5,060.70	275.00	1,391,692.50
Mandan to State Line, excluding Mandan	9,456.02	325.00	3,073,206.50
Fargo & Southwestern Branch	2,421.61	350.00	847,563.50
Casselton Branch	969.03	200.00	193,806.00
Cooperstown Branch	996.11	350.00	348,638.50
James River Branch	652.16	150.00	97,824.00
Oakes Branch	234.62	100.00	23,462.00
Devils Lake Branch	1,953.14	350.00	683,599.00
Sykeston Branch	1,519.41	150.00	227,911.50
Oberon Branch	495.04	150.00	74,256.00
Linton Branch	610.39	100.00	61,039.00
Red River Branch	1,354.73	300.00	406,419.00
Fergus Falls Branch	1,096.39	150.00	164,458.50
Fairview Branch	152.75	100.00	15,275.00
Joint property at Oakes (N. P. and C. & N. W.) one-half	86.82	500.00	43,410.00
Joint property at Linton (N. P. and C. M. & St. P.) one-half	19.05	150.00	2,857.50
Totals, excluding terminals	31,053.76	$284.93	$8,848,155.50
Terminals.			
Fargo	108.70	$9,807.31	$1,066,054.68
Valley City	78.59	5,709.77	448,730.90
Jamestown	211.64	2,308.92	488,659.88
Mandan	423.31	1,691.82	716,166.00
Totals, terminals	822.24	$3,307.56	$2,719,611.46
Grand total for State	31,876.00	$362.90	$11,567,766.96

MONTANA.

District.	Acres.	Av. Value per Acre.	Total Value.
State Line to Glendive	4,884.96	$50.00	$244,248.00
Glendive to Billings, excluding Billings	11,472.60	100.00	1,147,260.00
Billings to Helena, excluding Billings and Helena	11,863.45	125.00	1,482,931.25
Helena to Trout Creek, excluding Helena and Missoula	11,037.80	100.00	1,103,780.00
Trout Creek to State Line	1,530.80	50.00	76,540.00
Butte Line, excluding Butte	2,037.66	100.00	203,766.00
Red Bluff Branch	375.91	100.00	37,591.00
Pony Branch	98.87	100.00	9,887.00
Ruby Valley Branch	625.02	100.00	62,502.00
Rocky Fork Branch	881.19	200.00	176,238.00
Clarks Fork Branch	283.93	150.00	42,589.50
Park Branch	871.59	100.00	87,159.00
Cokedale Branch	42.70	75.00	3,202.50
Marysville Branch	255.46	75.00	19,159.50
Red Mountain Branch	185.09	75.00	13,881.75
Phillipsburg Branch	450.76	200.00	90,152.00
Coeur d'Alene Branch (in Montana)	2,560.01	150.00	384,001.50
Bitter Root Branch	923.03	300.00	276,909.00
Boulder Branch	75.18	50.00	3,759.00
Wickes Branch	7.80	50.00	390.00
Elkhorn Branch	325.65	50.00	16,282.50
St. Regis to Paradise	461.76	50.00	23,088.00
Total, excluding terminals	51,251.22	$107.42	$5,505,317.50
Terminals.			
Billings	92.50	$14,902.69	$1,378,498.90
Helena	223.50	1,044.54	233,456.00
Missoula	125.75	7,531.74	947,116.62
Butte	110.85	11,265.80	1,248,814.26
Total terminals	552.60	$6,890.85	$3,807,885.78
Grand total for State	51,803.82	$179.78	$9,313,203.28

IDAHO.

District.	Acres.	Av. Value per Acre.	Total Value.
State Line to State Line	3,256.10	$75.00	$244,207.50
Coeur d'Alene Line, excluding Wallace	317.83	75.00	23,837.25
Burke Branch	134.44	400.00	53,776.00
Sunset Branch	64.04	50.00	3,202.00
Fort Sherman Branch	183.40	600.00	110,040.00
Palouse & Lewiston Branch, excluding Lewiston	895.52	400.00	358,208.00
Genesee Branch	95.44	300.00	28,632.00
Arrow to Stites	1,155.00	75.00	86,625.00
Joseph to Grangeville	853.23	182.04	155,320.25
Total, excluding terminals	6,955.00	$152.96	$1,063,848.00
Terminals.			
Wallace	86.69	$6,000.00	$520,140.00
Lewiston	59.12	9,739.14	575,778.00
Total terminals	145.81	$7,516.07	$1,095,918.00
Grand total for State	7,100.81	$304.16	$2,159,766.00

WASHINGTON.

District.	Acres.	Av. Value per Acre.	Total Value.
Eastern State Line to Vancouver via Auburn	21,123.36	$300.00	$6,337,008.00
Auburn to Sumas	1,762.44	200.00	352,488.00
Palmer to Meeker	1,372.94	250.00	343,235.00
Palouse and Lewiston Branch	1,103.55	300.00	331,065.00
Genesee Branch	280.68	200.00	56,136.00
Farmington Branch	73.29	200.00	14,658.00
Washington Central Branch	2,009.03	200.00	401,806.00
Denny Branch—Davenport to Denny	360.02	100.00	36,002.00
Sunnyside Branch	169.50	300.00	50,850.00
Roslyn Branch	72.79	150.00	10,918.50
W. & C. Ry. Branches	2,081.00	150.00	312,150.00

WASHINGTON—Continued.

District.	Acres.	Av. Value per Acre.	Total Value.
Green River Branch	372.78	$ 150.00	$ 55,917.00
Burnett Branch	54.62	150.00	8,202.00
Wilkeson Branch	232.35	150.00	34,882.00
Crocker Branch	73.93	50.00	3,696.00
Orting Branch	94.62	50.00	4,731.00
Snoqualmie Branch	448.02	150.00	67,203.00
Everett Branch	104.57	150.00	15,685.50
Seattle Belt Line	229.64	400.00	119,856.00
Olympia Branch—Lake View to Centralia via Gate	706.92	300.00	212,076.00
Gray's Harbor Branch—Gate to Ocosta	621.89	100.00	62,189.00
Elma Branch	114.20	50.00	5,710.00
Port Townsend Southern Branch	461.16	163.08	75,204.00
Peninsular Branch	330.56	100.00	33,056.00
Cosmopolis Branch	3.53	100.00	353.00
So. Bend Branch	686.37	150.00	102,950.50
Darrington Branch	466.54	100.00	46,564.00
Yacolt Branch	353.62	100.00	35,362.00
Bellingham Branch	140.15	100.00	14,015.00
Monte Cristo Branch	788.74	75.00	59,155.00
Total, excluding Terminals below	36,692.81	$250.82	$9,203,123.50
Terminals.			
Spokane	422.31	19,201.83	8,109,128.62
Pasco	129.18	2,053.33	265,249.00
North Yakima	74.16	17,195.01	1,275,182.00
Tacoma	530.55	21,724.11	11,525,728.89
Seattle	432.60	61,984.48	26,814,488.18
Aberdeen	50.67	9,382.27	475,400.00
Hoquiam	28.85	13,669.46	394,364.00
Everett	124.68	3,000.00	374,040.00
Bellingham	71.69	4,610.18	330,503.82
South Bend	34.42	8,233.58	283,400.00
Walla Walla	31.38	11,168.39	350,464.00
Vancouver	35.24	8,095.17	285,273.80
Total Terminals	1,965.73	$25,681.66	$50,483,222.31
Grand Total for State	38,658.54	$1,543.94	$59,686,345.81

OREGON.

	Acres.	Av. Value per Acre.	
Goble to Corporate Limits, Portland	730.17	$572.49	$418,015.25
W. & C. R. Ry.—State Line to Pendleton	426.00	237.56	101,199.60
W. & C. R. Ry.—Killian Jct. to Athena	204.00	190.52	38,865.85
Total, excluding Terminals	1,360.17	410.32	558,080.70
Terminals.			
Portland	18.38	$26,186.34	$481,305.00
Total Terminals	18.38	$26,186.34	$481,305.00
Grand Total for State	1,378.55	$753.97	$1,039,385.70

LINES UNDER CONSTRUCTION.

	Acres.	Cost.
Cannon Ball Branch, North Dakota	410.06	$ 7,018.70
Mandan to State Line	569.01	50,861.10
Mandan to Glendive	1,116.23	34,579.68
Shields River Valley	171.46	14,123.58
Kelso to Cosmopolis	801.63	156,632.43
Tacoma to Tenino	834.27	1,351,639.14
Total	3,902.66	$1,614,854.63

The above represents the actual expenditures for right of way for the various lines indicated; actual construction has been commenced upon the first four lines, and it is intended to commence upon the last two lines as soon as the acquisition of the right of way is sufficiently advanced.

TERMINAL UNDER CONSTRUCTION.

	Acres.	Cost.
Winnipeg, Manitoba	320.67	$1,142,500.00

The Northern Pacific Ry. Co. owns an undivided half interest in property being purchased for a terminal at Winnipeg, the other half interest being owned by the Great Northern Ry. Co.; the acreage shown above is the total purchased; the cost represents the actual cost of the Northern Pacific's half interest.

Mr. Teal: Mr. Holden, in your opening statement, from your standpoint, you stated that the court in passing upon this question would pass upon it as of the date the Commission passed upon it. What date do you fix as the proper time in your view that the court should apply the order in this case?

Mr. Dillard: I think the question was to pass upon the reasonableness of rates as of that time, was it not?

Mr. Holden: I don't recall just what my statement was in that regard.

Mr. Teal: Your statement to the court was this: that this court must pass upon this question as of the time that the Interstate Commerce Commission passed upon it. That is the time of the advance. Now, fix that date.

Mr. Holden: The advance took effect November 1, 1907.

Mr. Teal: That is what I wanted to understand.

Mr. Holden: The testimony before the Commission, and upon which it based its conclusion, had practically all to do with conditions up to that date.

Mr. Teal: That is what I wanted understood. So that November 1, 1907, the date of the advance of the rates, is, under the contention of the complainant, the time to which the testimony should be addressed, as to whether or not the order was reasonable.

Mr. Donnelly: Of course that is probably a disputed question, if your Honor please; but at any rate we will cover the point by the introduction of this statement showing values at the present time, and then we will show how much less it would have cost to have acquired the total property as of November 1, 1907, assuming that that may possibly be the correct date, and again as of another date, to meet the possible contingency of some other date.

Mr. Teal: I just wanted to call your attention to it.

The Master: That date is November 1, 1907.

Mr. Donnelly: It was November 1, 1907, that the tariff which the Commission displaced went into effect.

Q. Will you state to the Master, Mr. Cooper, in a general way, how this statement showing this cost of reproduction has been made up; what preperation you had had in the way of preparation of similar statements in other cases, for instance?

A. In March, 1906, the company was called upon to make a report to the Railroad Commission of Minnesota, showing the value of its property in that state. I was instructed to prepare the real estate part of that report. That data I had pre-

pared, when I was called upon to testify in what is known as the Spokane rate case, in March, 1907. My testimony in the Spokane rate case was to cover practically the same as in this present case; that is to say, the value on the basis of the estimated cost of reproduction of all of the right of way, station grounds and terminals of the company. I made up for the Spokane rate case a statement in which I used, so far as Minnesota was concerned, the information that I had gathered together for the report to the Commission of that state. I had estimates made of the value of our property, or rather, you might more properly call them appraisals, of as many of the larger terminals as there was time to procure. I only had a short time to prepare myself in that case. I covered, however, in that short time appraisals of Seattle, Tacoma, Spokane, and I think some of the other terminals. I made up my estimate which I used in the Spokane rate case, by taking, as I have stated, the report that I had made for the Railroad Commission in Minnesota. I started in then at North Dakota and made up my estimate for that state, by placing before me maps showing our property commencing at Fargo and continuing west, having in front of me all of the information that we had acquired in purchasing property in that state; also the information that we had gathered together as to the value of our ownership at stations for leasing purposes; also my own knowledge of the state and the country through which the railroad passes, and I systematically made up that statement, commencing first, to illustrate, taking the City of Fargo; I made up what I considered a fair estimate of the cost of reproducing our holdings there by the use of the information that I have referred to; then leaving Fargo, I estimated what it would cost us to buy the right of way in the country till we got to the next town of any importance, which was Casselton. I then estimated in like manner the value of our ownership in Casselton. Then, leaving Casselton, took up the country value again, and so on all through the states; and in that way I made up the statement which I used in the Spokane rate case, and which statement has been the foundation for the testimony that I gave in the Minnesota rate case and in this case. As the result, however, of my experience in these two cases, and with a desire to check the estimates that I had made, I have had appraisals made of our ownership in all of the larger terminals along the line. The result is that I am now able to show in this exhibit thirty terminals, with an aggregate value of $85,000,000 out of a total of $114,000,000, all

of which terminals have been appraised carefully and are not mere guesses as to the value. I will add that in practically every case where I have had an appraisal made I have found that my estimate as used in the Spokane and Minnesota rate case was too low. A notable exception to that, however, was Butte, where I estimated the value of our property in Butte as $2,000,000. I had an appraisal made within the last month and it showed a value of $1,248,814—proving that I was entirely too high at Butte. That, however, as I have said, is the only notable exception to the rule that my estimates as used in the Spokane rate case and again in the Minnesota rate case were too low. This estimate that I now present, therefore, shows that out of a total of $114,000,000, $85,000,000 of the property is the result of careful appraisals; and I will explain that as to these appraisals they have been made in either one of two ways: they have been made either by my own assistants, aided with information procured from local real estate men, or they have been made direct by local real estate men that we employed for the purpose; and in the employment of those local real estate men they were instructed in each case to make their valuation on a basis which I can best set forth by reading the certificate that is attached to one of them, which is a sample of the rest: "We certify that the foregoing appraisal was made at the request of the land commissioner of the Northern Pacific Railway Company; that it correctly represents, according to our best judgment, the present value of the naked real estate, without improvements based upon the prices at which abutting property and other property of similar value for business or residence purposes is being bought and sold for in the ordinary course of real estate trading; and that we have made no allowance for the necessarily increased price which a railway company would have to pay in purchasing the property." That certificate is the one covering the appraisal at Brainerd, Minnesota. The appraisal in that case was made by three appraisers, all of them real estate dealers and owners of real estate in that city, old residents there and men whom we believe to be thoroughly qualified to make an appraisal. In the cities of St. Paul, Minneapolis, and Duluth we employed three real estate dealers in each city to make the appraisal of our property. This exhibit shows their figures exactly, with 25 per cent. added to cover the increased cost that a railroad company would have to pay for purchasing the property and the improvements, severance and consequential damages that it would have to pay. In Tacoma and Seattle (I am mentioning these because they are the larger

towns and cover most of the money) we used our own men there, men who were familiar with values in these cities and who supplemented their own knowledge by consulting local real estate dealers. I was able also, because of my familiarity with the properties there to check the value perhaps better in Tacoma and Seattle than in other places—Tacoma, because of my long residence there and because I kept in very close touch with values, having purchased for the company more than one-half of the property that it now owns there, also having purchased for the company considerable of the property that it owns at Seattle; also having an intimate knowledge of the properties that were purchased by the Great Northern for the joint account of the Northern Pacific and itself. At Spokane, the valuation was made there by two local real estate men, and their valuations, I may add, were very close to those made by the appraisers that the State of Washington appointed for the same purpose. So that this exhibit, in my judgment, represents conservatively what it purports to—the cost of reproducing the property of the Northern Pacific Railway Company.

Q. That is the real property?

A. The real property; talking now only of the real estate.

Q. Independent of the land grant, of course?

A. And independent entirely of the land grant, being what might be termed the operating property. I feel that it is conservative, feel that very decidedly, because every time that I have checked by a careful appraisal in the utmost detail, my figures that I had previously estimated I find that I was low.

The Master: Just one moment. Is that of this date? You say this represents your value as of what date?

The Witness: That is of this date. It is brought down to date. It will be found, by comparing it with the statement in the Spokane rate case and the Minnesota rate case that it has been increased. Some of that increase is due to the appraisals that I have had made, and some by reason of the inclusion of property purchased since I made the estimates that were used in these two cases.

Q. Calling your attention to the first sheet of Complainants' Exhibit 2, Mr. Cooper, that sheet contains, as I understand it, a general summary of the information appearing in the sheets that follows it? That is correct, is it?

A. That is a summary by states. Following it is the detail of each state.

Q. And from this general summary it appears that the total cost of acquiring at the present time, or of reproduc-

ing the real property used by the Northern Pacific Railway Company in connection with the operation of its system, is $114,693,882.25?

A. That is correct.

Q. That total is divided into two large subdivisions—that is, of terminals and right of way and station grounds?

A. That is correct.

Q. The terminals having a value, or an estimated cost for reproduction, of something over $85,000,000, and the right of way something over $29,000.000?

A. That is correct.

Q. You have stated, I think, with sufficient fullness, the methods pursued in arriving at the value of the terminals; and those values are shown in the second sheet of the exhibit, as I understand it?

A. The second and third.

Q. The second and third sheets of the exhibit. Then follows a detailed statement by states of the total value or present cost of reproducing the real property, the first being with reference to the right of way, and then the terminals in that particular state, is that right?

A. That is right. That is the way all of the statements are made up.

Q. So that, for example, taking the State of Wisconsin, it appears from your statement that the total value of the right of way of the Northern Pacific in that state is $414,619, and the total value of the terminals, $1,904,577.92?

A. That is correct.

Q. That same system has been pursued throughout, has it?

A. Yes, sir.

Q. Throughout the various states through which the Northern Pacific runs. Now, calling your attention, simply for the purpose of illustration, to the State of Montana, for example, or say the State of North Dakota; you have there a statement showing that the present average value per acre of the right of way between those points is $325 per acre?

A. What item is that?

Q. Mandan to the state line. The third item in that state, the State of North Dakota.

A. Yes.

Q. Does that mean that that is what it would cost any individual to go and buy an acre of land in that vicinity at this time, or, if not, what does it mean, and how is that value arrived at?

A. Mandan to the state line, excluding Mandan. That represents average cost per acre of buying the right of way between these two points, which means that the right of way passes through a number of fairly good sized towns, for instance, New Salem, Glen Ulen, Hebron, Richardson. Taylor, Gladstone, Dickinson—a town of four or five thousand people—Bellfield, Medora, Central Butte, Beach. The cost of getting the right of way through these towns is all included in that item of $325 per acre, average. Therefore, it is important to keep in mind, in considering this statement, the towns through which the various lines pass, and what it would cost to buy the right of way through these towns. In that district, from Mandan to the state line, I should think that the average value per acre would probably be about $20, as agricultural land, which multiplied by 3, which experience teaches us is the multiple that you have got to use to cover the severance damage and cost of improvements, would make about $60. Therefore, if that item was written so as to exclude all the towns between these points, it would come down to probably $60 or $70 per acre, instead of $325, and the difference between the $60 or $70 per acre and $325 per acre, as given in that exhibit, is what you have to pay for right of way getting through all of these various towns. It is very important to keep in mind just the relative insignificance, as I might call it, of the country right of way—that is, as distinguished from the right of way through the towns, cities, and villages.

Q. That is, right-of-way and station grounds both, I suppose?

A. Yes. When I speak of right-of-way I of course include station grounds. That was well illustrated in the Minnesota rate case, where I prepared an exhibit which shows that out of a total value of right-of-way, station grounds and terminals in the state of Minnesota of $23,487,000, as the company reported it to the state in the report called for by the Railroad Commission, as I have explained previously, this acquired right-of-way that I speak of was only $1,637,000; the three terminals—Duluth, St. Paul, and Minneapolis—aggregated about $18,500,000, other cities, towns and villages, $3,000,000 (I am speaking now in round figures), the country right-of-way, $1,600,000. These figures for the state of Minnesota (and they will apply substantially to all the other states) show the relative insignificance of what might be called the country right-of-way as compared with these large totals.

Q. So that included in the average cost per acre of what

is called the right of way is a considerable amount of what might be called city property?

A. Yes, sir.

Q. And substantially all of the cities along the line of the Northern Pacific, or the real estate owned by the Northern Pacific in all of the cities except those cities that are enumerated and grouped as terminals, are included in the cost of the right-of-way?

A. That is correct. Another good illustration which appears in this same exhibit is our Stillwater branch. The value of the right of way of the Stillwater branch, as shown in this exhibit, is $46,416, whereas the value of our property in Stillwater, the town at the end of the branch, is $254,000.

Q. Speaking generally, where is the real property of the Northern Pacific Railway Company located in these towns with reference to the business center of the towns generally?

A. The Northern Pacific was the pioneer line constructed in the Northwest. There was no development along the line until the railroad was constructed. Therefore, the towns and villages and cities have grown up along the railroad on both sides of it, as a rule, and you can stand on the depot platform at most of our stations and throw a stone into the business district. Anyone who has traveled along the line of the Northern Pacific will recognize that at once. The depot is within a minute's walk of the business part of the towns, and the smaller cities and the villages. Therefore, our property occupies property that from a railroad standpoint is about the most valuable in the towns that we pass through. And because of its location it has a decided business advantage; that is to say, we are so convenient that we attract business that otherwise we would not get where we have competition. Where other lines have not built into these towns, they have had to take a back seat, as it were, and could not get as advantageous a location as the Northern Pacific. But I do not wish to be understood that in appraising this property I have added anything for that value, as a business getter, by reason of our location. I have simply treated it purely as a real estate proposition and on the basis of what it would cost to purchase that property today.

Q. But it is a fact that the property of the Northern Pacific Railway generally along its line is so located with reference to the business center as to have special value as real estate?

A. That is correct.

Q. In getting at the value of the right-of-way in what we call the country right-of-way, you spoke in one instance of the land used as right-ofway having a value, perhaps, of $20 per acre for agricultural purposes, and of your having multiplied that $20 by 3 in order to determine what it would cost the railway company to acquire it. Why did you use that multiple?

A. The multiple of 3 has become recognized among railway people and State people who have to deal with making estimates of this kind as a fair, reasonable figure to use, based upon actual experience. The State of Minnesota used it in their report, and the State of Wisconsin (I am told) used it. And when the railway companies were called upon by the State of Minnesota to make an estimate, there was a meeting held in my office of the different railway officials who were charged with the duty of making the report for their various companies, and that question was discussed at that time, and we agreed that in the country and in the smaller towns and villages a multiple of 3 over what might be called the ornery value, the value for agricultural purposes, if it was country property, or value for town purposes, if it was town lots, was as near right as our experience could determine; that in the larger towns and cities that multiple would be too great, and that no fixed multiple could be used in the larger cities or towns; it must be left to the discretion of the officer making up the estimates, based on his knowledge of the legal situation in each case. I am sorry to say that my experience shows that the multiple of 3 is too low where you are going through a developed country. Where you are figuring on a country that is sparsely settled, sparsely developed, it is probably a little high. Taken as a whole on the line of the Northern Pacific I think it is too low.

Q. Why is it necessary to use any multiple at all, Mr. Cooper, why should you say that it would cost the Northern Pacific Railway Company more to acquire an acre of land than it would cost anyone else to acquire it for any other purpose?

A. Well, I can illustrate by an actual case, or cases, perhaps, better than any other way. We are about to build a line from Mandan south along the Missouri river. That right of way we are now purchasing; we commenced to purchase it last year. I hold here a contract secured by one of my right-of-way men from Robert Gwyther and his wife for a right-of-way across their lands. The area of that right-of-way is

58.43 acres. The consideration recited in the contract is $10,000. Accompanying the contract the right-of-way man made a report, which I will read. He says, "Right-of-way runs throuh center of farm, takes approximately half of the cultivated land; balance pasture, garden, shade and fruit trees and buildings. Following buildings have to be removed; log horse-barn, cattle-barn, machinery-shed, old house used as a granary, poultry-house, ice-house, root-house, storage house. Right-of-way also runs about thirty feet from a two-story frame dwelling-house, costing $5,000, which will probably be moved. Dwelling has hot water heating plant, bathroom, with hot and cold water and water closet. Water is piped into the house and barn from a well across the proposed railway track, and the water system will have to be entirely changed. This place is arranged with walks and curved driveways, lawns and shade trees, and the railway interferes with and practically spoils the whole plan of a fine country residence and farm." Well, $10,000 is a lot of money even for the Northern Pacific. I expected to make a trip down into that country, and I concluded I would let that case wait until I went down there and looked at it—which I did. It happened that President Elliott was along with me. We stopped there and looked the whole place over, and at the end we concluded to pay the $10,000. The land was probably worth $30 an acre. That would be a good, fair, generous price for it. So that all of the rest of that was made up, you can see, of the elements that I have read to you from the right-of-way agent's report. We were coming in there and come pretty near spoiling this man's place, or seriously damaging it. The question, of course, that confronts a railway company in this and all other cases, is what he will get on condemnation; that is the thing that you have got to make up your mind and guess at in the best way you can in determining whether you will pay the price that the owner asks. In this case we concluded that the demand, or the price, as it would properly be called, of the owner, was not unreasonable, that we could not do better on condemnation, and we paid it. Now, then, the multiple of 3 on the agricultural value in this case, you see, would have been entirely too low; but it illustrates what this multiple is for. This was probably, in fact I am free to say this was somewhat of an extreme case; otherwise, the multiple of 3 would have to be raised away up, because the fair value of those 58 acres of land at $30 would have been about $1800.

Now, we paid him six times that. That is a sample case, which illustrates what this multiple is used for. It is to cover the severance damage, the damage done to improvements, that must be taken into account somewhere.

Q. And the value of the property itself?

A. And the value of the property itself, and the enhanced value that a railway company has to pay for property. There is an important item that must be always taken into consideration when you are figuring that the value of a piece of farm land is $25 an acre; that does not mean that the railway company can buy a right of way through it, even if there was no severance damage or any other damage, for $25 an acre.

Q. Why not?

A. Well, the fact that a railway company wants it gives it an additional value; it is a new use to which the property can be put.

Q. And you have to have it, I suppose?

A. And the railway company has to have it. I suppose that is the scientific way to put it. The real reason is that the opportunity is afforded the average citizen to get square with the railway company for some fancied grievance, or no grievance at all—maybe just human selfishness—and he never misses the opportunity. So we don't expect to buy a right of way at its fair value. If we did, we would get woefully disappointed every time. We expect to pay very generous prices, and have to pay them.

Mr. Teal: Your remarks with reference to the treatment of railway companies by individuals do not apply, I suppose, merely to individuals? Would they apply, for instance, to another railroad company? Take, for illustration, your treatment down the North Bank river. Did the Harriman people treat you with generosity going down there?

The Witness: No. They treated us with a club. But we have no harsh feelings on the outcome of the North Bank at all, you know. We have a line there now, you know.

Mr. Teal: Indeed, you have, thank God.

Q. Now, you don't have to purchase at the owner's price; you can go into court and condemn. What is your experience, as a rule, when you resort to that method of acquiring title?

A. Not very comforting, I assure you. I have a condemnation case illustration. I am free to admit it was an extreme one. They are not all as bad as this, thank God! This was

the case of Mrs. Bandman, the widow of Daniel Bandman, who in my boyhood days was quite a tragedian. Mrs. Bandman has a place out near Missoula, a very nice place, within four miles of the town of Missoula. We decided to make a line change, which forced us to purchase a right-of-way across this place. The Milwaukee Company, in building its new line, placed itself immediately alongside of us; so that the two railroad companies started to purchase a right-of-way side by side. We started negotiations with Mrs. Bandman for the 36 acres which we required, and she wanted twenty-five thousand dollars. I offered her seven, and she came down to twelve thousand five hundred and "stood pat," as I also did on my seven thousand. It was evident then that we were going to have a condemnation, and I had the property gone over with the utmost care by two of my land examiners, men experienced in land examination work, and they made a map on a very large scale of the whole place, the total area of which was 301 acres. They showed all of the improvements, and valued everything on the place—the trees and the buildings and the land itself—under my instructions—valued it just as high as they thought it could possibly stand. They put the value of the whole place at $22,000, and the value of the right-of-way and the damage that we did to her at $3,600. We went into court and started condemnation proceedings. In Montana the proceedings are held there first before a commission appointed by the court. The commission gave her $12,355. The Milwaukee was conducting its proceedings at the same time, they requiring 25 acres, and the commission gave her against the Milwaukee $9,000. She got from the two railway companies $21,335 for 61 acres of her place; that is to say, we practically paid for the whole place, if the judgment of my men was right as to its value, and she still has a pretty substantial place left yet. We considered them, "Shall we appeal?" In Montana we can appeal to a jury. I took that question up with our division counsel who had handled the case, and I remember his reply very well. He said he thought we had better settle; that every tear she shed before the commission (and she shed a good many of them) cost us $500, and he was afraid to go before a jury with that same condition of affairs. I didn't know where we would wind up. Now that is an illustration of what happens to a railway company when you run against a widow—although she is a very charming widow and a very clever woman. I have no doubt—it is all over now and passed—I have no doubt we

paid three or four times what that property was worth—honestly and fairly worth. And that is our experience generally with condemnations. We don't know where are are going to land. We sometimes strike a fair jury, but we never get the best of anyone. We always pay them generously what their property is worth. I never heard of a jury giving a man less than his property was worth, acknowledged by those who were entirely disinterested. So that it really is a question whether you will pay once, two, or three, or four times the value of a man's property when you go into a condemnation.

Q. Have you prepared a statement, Mr. Cooper, showing what you have actually paid for right-of-way purchased and used by the Northern Pacific in the years 1905, 1906, 1907, 1908, and 1909 for line changes and new lines?

A. I have.

Paper marked Complainant's Exhibit 3 (Cooper).

COMPLAINANT'S EXHIBIT 3 (COOPER).

STATEMENT SHOWING ACTUAL COST OF RIGHT OF WAY PURCHASED IN YEARS 1905, 1906, 1907, 1908 AND 1909 FOR LINE CHANGES AND NEW LINES AS DESCRIBED.

	Acres R/W Purchased.	Miles R/W Purchased.	Total Cost.	Cost per Acre.	Cost per Mile.
Wadena to Glyndon Line Change	620.089	23.320	$178,491.87	$287.85	$7,654.02
G. H. & C. Riv. Ry., Kelso to Cosmopolis	801.630	51.974	156,632.43	195.38	3,013.69
Big Fork & International Falls Ry.	542.000	32.500	48,475.47	89.44	149.15
Missouri River Ry., Mandan South	569.010	68.930	50,861.10	89.37	73.78
Cul de Sac to Grangeville	662.110	46.650	100,084.25	151.16	2,145.43
Alta to Berea, N. D., Line Change	466.900	8.370	44,413.87	95.13	5,306.32
Garrison to Missoula Line Change	883.289	15.000	184,876.98	209.31	12,325.13
Vancouver to Kalama Line Change	298.198	9.000	72,052.58	241.61	8,005.84
Belknap to Tuscor Line Change	398.460	14.096	37,486.80	94.08	2,659.32
Paradise to St. Regis New Line	461.760	20.253	19,215.55	41.61	948.82
Tacoma to Tenino New Line	834.270	28.063	1,351,639.14	1,620.15	48,169.60
Livingston to Muir Line Change	166.930	8.794	11,156.75	66.83	1,268.68
New Line Spokane to Portland (excluding Spokane, Pasco, Vancouver and Portland Terminals)	7,996.940	305.181	1,980,102.88	247.62	6,488.29
Totals	14,701.586	632.131	$4,235,489.67	$288.09	$6,700.34

Q. That statement represents right-of-way actually purchased by you during the years named?

A. That is correct.

Q. And now in use or in prospective use by the Railway Company, or is it all being used at this time?

A. No; the first item, Wadena to Glyndon, that is our line change up here in Minnesota; that is partly in use. The next item, Kelso to Cosmopolis; that line has not been constructed. We are not purchasing the right-of-way, and the figures shown represent what we have actually acquired, and its actual cost. The Big Fork & International Falls Railway; that is actually in operation. The Missouri River Railway, from Mandan south; that is the new line that I spoke about a few minutes ago, for which we have just let the contract to construct. It will be commenced within a few days. Cul de Sac to Grangeville, the next item, is in operation. The next item, Alta to Berea; that is the line change around Valley City, and is in operation. Garrison to Missoula: that is a line change; that work is to be completed. My friend Mrs. Bandman, of whom I spoke, appears in that item there. Vancouver to Kalama: that is a line change work that is in progress now. Belknap to Tuscor; that is another line change; that is to be completed. Paradise to St. Regis: that is a new line now in operation. Tacoma to Tenino; that is a new line on which construction has not been commenced. Livingston to Muir: line change; that is in operation.

Q. The next one represents the new line Spokane to Portland.

A. The next one is the S. P. & S. line which is in operation from Kenewick to Portland, and not completed yet from Spokane to Pasco.

Q. Now, how do the prices actually paid by you for this right-of-way, as shown on Exhibit 3, compare with the estimated cost of acquiring the right-of-way of the Northern Pacific as shown in your Exhibit No. 2? Just indicate some comparisons.

A. The average of the estimate, Exhibit 2, of the item "Right-of-Way and Station Grounds," which does not include any terminals, is $195.57 per acre; that is to say, that is my estimate of the cost of reproducing the right-of-way and station grounds on the whole system, as shown on Exhibit 2, excluding the terminals. That compares with this new Exhibit 3 in which the average is shown of $288.09 per acre, there being no terminals included in this exhibit also; that is

to say, the comparison is a fair one because terminals are excluded in both cases.

Q. And the price actually paid for the right-of-way as shown in Exhibit 3 is about $93 per acre more than the estimated cost of acquiring this right-of-way as shown in the Exhibit No. 2?

A. That is correct. And it will be noted that Exhibit 3 covers 632 miles of right-of-way, which is a very substantial quantity.

Q. And covers right-of-way in practically every state on the system, doesn't it, with the exception of Wisconsin?

A. Every state excepting Wisconsin. Now you take the first item, Wadena to Glyndon; it shows an average of $287.85 per acre, actual cost of the 23 miles of right-of-way which we purchased there for the line change. That compares with the item appearing on Exhibit 2, Minnesota, Staples to Moorhead, in which the average there is given as $219.95; that is to say, the old line between Wadena and Glyndon is included in the item Staples to Moorhead on Exhibit 2. The new line appears only on Exhibit 3. The two lines are not to exceed at any point a mile and a half apart, running through practically the same character of country, no appreciable difference in the value of the lands between the old and the new lines, and the new line runs through two villages only, to-wit: Hawley and Lake Park. So that the comparison as between the two is perfectly fair, and I feel that it could very properly and conscientiously have increased that item as it appears on Exhibit 2; that is to say, the item Staples to Moorhead. In view of our experience in buying this new right-of-way I feel that my estimate between Staples and Moorhead is too low.

Q. Now, before we pass that point, Mr. Cooper: you spoke of having added 25 per cent. to the appraised value of the terminal property in the Twin Cities here; instead of using the multiplier of 3, you used the multiplier of one-fourth. Was that additional 25 per cent. or that multiplier of one-fourth used for the same reason that constrained you to multiply the actual value of the property for agricultural purposes in the outside country districts by 3?

A. No; in the larger cities, and in fact in the towns, you have no severance damage as a rule. You purchase an entire lot or an entire block. You are not cutting a man's property in two. I am speaking now of the rule. Sometimes, if you cannot agree with him, you condemn only the small part of the lot that you actually need. But as a rule when you are pur-

chasing terminal property you purchase the entire lot. Therefore the severance damage can be eliminated in property of that character; and the multiple that you use for property of that kind, which in the case of St. Paul and Minneapolis is by adding 25 per cent, is to cover principally the improvements that would be on that property if you had to go out and purchase it. That is to say, if it was not in use for a railroad it would be in use for some other purpose. There would be business blocks on it; there would be industries of various kinds, perhaps; there might be a gas works on it, all of which, in buying the real estate, you have to pay for. So that in estimating the cost of reproduction you necessarily must include something to cover the improvements that you would have to pay for if you were buying the property.

Q. Do you encounter these same difficulties in the way of prices going up as soon as it is learned that a railroad company is endeavoring to obtain it, that you do in buying property in the country districts?

A. Yes. I don't think there is much difference between buying in the city and in the country in that respect. They catch on pretty quick in both cases. An illustration of what we are talking about is afforded by the property that we have been purchasing for three years right here in St. Paul. It is the property that lies between Commercial street and the St. Paul & Duluth freight yard. We started in to buy that property some three years ago, to make a passenger terminal out of it. We had plenty of time, so that we could purchase it to the best advantage. I had a St. Paul real estate man buy the property for us, and he kept under cover for quite a long time. His selection was fortunate in some respects and unfortunate in others. Nobody ever dreamed we would have selected him to buy the property, and that was our salvation for quite a while. He started in buying that property, and the first purchase we made we paid ten cents—to be exact 10.8 cents per square foot. It went on then for quite a while between 10 cents and 20 cents. We made a total of 18 purchases. The eighth purchase we made cost us 30 cents, and it kept on going up until the last purchase we made—and in the meantime we had been discovered. We kept under concealment for about two years. A smart old Irishman who lives over there, who had some of that property, commenced to smell a rat, and he came over to see me one day, and I had to admit that it was so. He wouldn't deal with the real estate man—it was hopeless—so I had to deal with him myself. The last purchase we made was on

December 1, 1908, and it cost us $5.38 cents a square foot. That, however, included quite a large building, what is known as the Robinson & Cary warehouse. But that illustrates just what we are getting at; that is to say, in buying a large amount of property like this, you will find some of it on the market that you can purchase at a reasonable value; you will find some of it that is not on the market, the owners don't care to sell, but you are probably able to tempt them by some story about needing it for a warehouse. I don't know what kind of stories my man told them, but at all events he kept it concealed for quite a little while that it was a railroad and coaxed them to sell. Pretty soon there was so much buying going on there that they commenced to suspect something. Naturally they would figure out that it was a railroad—didn't know what railroad company, but some railroad company wanted it. Then it commenced to go up at alarming rates. We finally bought it all excepting the Robinson & Cary warehouse, a piece of improved property belonging to the Standard Oil Company which we have not yet purchased, and the Pinch Gas Company which we have not yet purchased. When we get through purchasing all of that property, including these two pieces of improved property which we yet have to purchase, that chunk of property which started at 10 cents a square foot will probably average us $3. I don't know how much we will have to pay the Standard Oil Company. We think it will cost $150,000 to move them. They have said to us that if we will give them an equally good location and pay them the expense of moving their plant they will make a deal with us on that basis. But it illustrates the necessity for adding something on to the market value of the naked real estate when you come to deal with a proposition of this kind.

Q. Now turning to your statement Exhibit 2, the first sheet of the detailed sttaement covering the State of Minnesota, you find at the bottom or towards the bottom of that sheet, the item "Minnesota & International Ry. (70 per cent.)," total value $95,000. What does that represent?

A. The Northern Pacific owns 70 per cent. of the capital stock of the Minnesota & International Railway. That item represents 70 per cent. of the acreage and 70 per cent. of its value; in other words, it represents exactly the Northern Pacific's interest in that piece of railroad—the real estate part of it.

Q. And the same explanation applies to the Big Fork and International Falls Railway?

A. That is right. The Northern Pacific in that case owns all of the stock.

Q. And both of those railroads are used in connection with the Northern Pacific system?

A. Oh, yes.

Q. As a part of its railroad system?

A. Yes, sir.

Q. Now, in the detailed statement covering the State of North Dakota, you have at the bottom of that sheet "Joint property at Oakes" and "Joint property at Linton," the first being property owned in connection with the Chicago & North-Western and the property at Linton being owned in connection with the Chicago, Milwaukee & St. Paul. Those, I apprehend, are station grounds or right-of-way used?

A. Station grounds that the two companies purchased and use in common, each owning a half interest.

Q. Now, this Exhibit No. 2 and the Exhibit No. 3 were prepared by a number of individuals, I suppose, and from the records of your office down at the Northern Pacific building in this city?

A. I have used a number of my men to help me in making them up. Is that what you mean?

Q. And of course the records of that company were consulted in determining the acreage?

A. Oh, yes. We took our maps and compared the areas from our right-of-way maps. In Exhibit No. 3, the total cost item, which is the important item in that, is taken right from the Auditor's books.

Q. All of those records and all that were used in the preparation of this statement, and all of the individuals who had any part in its preparation, are available here in St. Paul, and you are willing to have them produced here for the purpose of examination, if necessary, I understand?

A. Yes, sir.

Q. This statement Exhibit No. 2 you state represents what it would cost to acquire or to reproduce this real property as of the present date. Can you state what it would have cost or how much less would have been the cost of reproducing the property or real property used in connection with the Northern Pacific Railway as of the date of November 1st, 1907? You need not be absolutely accurate, but how more is the present cost of reproducing that property, or how much does the present cost of reproducing that property exceed what it would have cost as of that date?

A. There are the new properties acquired since that date

to be deducted, and that is about all. I do not consider that there is any substantial difference in the cost of acquiring the property between the two dates. Values have gone up some here in St. Paul and Minneapolis. They are about a standstill in Tacoma and about a standstill in Seattle, and have been for a couple of years. In Spokane there is considerable activity now. Oh, I should say, in round figures, a million dollars.

Q. So that at all times since November 1, 1907, the physical real property of the Northern Pacific Railway Company used in connection with the operation of its railway, would have cost within at least a million dollars of the figures shown in your Exhibit No. 2?

A. That is my best judgment.

Q. I find the last sheet in this Exhibit No. 2 is a map. That shows the present lines and the projected lines of the Northern Pacific Railway, does it?

A. That is correct.

Q. The projected lines being dotted lines and the lines actually in use the solid lines. By the word "projected," I presume you mean lines which you contemplate building?

A. And are buying right-of-way for; that is really what they show. We have commenced buying right-of-way on all of the dotted red lines on the map.

Q. The solid lines are the lines actually in use?

A. That is correct.

Q. In the sheet just next before that map, you represent the lines under construction, showing a total acreage of 3,902 acres, and a value or cost of $1,614,000, and you also represent the Winnipeg Terminal under construction, having a cost (estimated) of $1,142,500. Are those two items included in the total which you have summarized on the first page of the statement?

A. No, sir.

Q. The $114,693,000 is independent of those?

A. Entirely so. They are not included in the summarized statement.

Q. No portion of our right-of-way in the Spokane, Portland & Seattle Railway is included in this statement, as I understand it?

A. None whatever.

Q. It represents simply the property used by the Northern Pacific in connection with the operation of its road?

A. That is correct.

Q. How does the total value as shown in this statement

compare with the total value as shown in your estimate put in evidence in the Spokane Rate Case and your later evidence or estimate put in evidence in the Minnesota Rate Case?

A. My total in the Spokane Rate Case was $107,149,891.26; in the Minnesota Rate Case $108,034,852.08.

Q. How do you account for the excess of your present estimate over the figures as shown in those two cases?

A. There is the new property purchased, as I have already spoken of it, and there is an increase in St. Paul and Minneapolis from—

Q. You need not give details, Mr. Cooper; just in a general way. I want to have the discrepancy accounted for.

A. From 14 and a half million dollars in the Spokane Rate Case in these two cities, 15 million in the Minnesota Rate Case in these two cities, the increase between these two figuhes being new property acquired, to $17,600,000 in this present case.

Q. That is, the estimated cost of the terminal property in the Twin Cities is about two and a half millions more than it was estimated in the testimony in the previous case?

A. Yes. A part of that increase is new property, but the bulk of it, perhaps two million dollars of the increase, is accounted for in this way: As I have already explained, in making up our valuation for the State of Minnesota, we employed three local real estate dealers of St. Paul to make the appraisal—Messrs. Taylor, Watson and Reed. When their appraisal was turned in to me I thought it was too high and I reduced it. During the time that had elapsed since I have become firmly convinced that I made a mistake in reducing their valuation, and that my figures (after reducing their figures) were entirely too low. I reached that conclusion not hurriedly at all, but I have been watching the values of real estate here in St. Paul, have seen how they have been going, and I know a great deal more about the matter than I did at that time when I reduced their appraisal. I testified in the Minnesota Rate Case that I had made a mistake in reducing their figures. When I had the opportunity now, in this case, to make a new valuation, I concluded to rectify the mistake and use their figures exactly as they made them, adding, as I have explained, the 25 per cent. That accounts for the difference in St. Paul and Minneapolis. I have made other changes as the result of the appraisals that I have had made; where I found that my figures used in these previous estimates were too low, I have increased them.

Q. Were you lower than those subsequently made by the appraisers?

A. Yes; that is to say, my present estimate is based on the appraisals I have had made since I gave my testimony in those other cases, and in no case have I increased the figures used by me in the Spokane and Minnesota rate cases excepting where there has been an appraisal made or excepting where we have bought new property, in which cases we have had the actual cost.

Mr. Donnelly: Now, Mr. Teal, subject, of course, to the objections which you made at the outset, we offer these three exhibits (Complainant's Exs. 1, 2 and 3) in evidence.

The Master: They will be received subject to the objection.

Q. Mr. Holden suggests it should be made perfectly clear by your testimony that these figures represent simply the naked real estate, that is, the cost of acquiring the naked real estate; that they have nothing to do with the constructed railroad upon it or the cost of grading the road, or anything of that kind. That is correct, is it?

A. That is entirely correct.

Mr. Teal: Not the station houses or buildings?

Mr. Donnelly: Oh, no; no improvements.

The Witness: The naked real estate only; no improvements of any kind on it.

Mr. Teal: All right; I just wanted to understand that.

Mr. Donnelly: That is all.

Cross-Examination by Mr. Teal.

Q. Mr. Cooper, you have been connected with the Northern Pacific for a long time, in connection with the Land Department, have you not?

A. Yes, sir.

Q. Can you g[illegible] the exact figures as to what the right-of-way of the Northern Pacific Railway Company has actually cost? ?

A. No, sir; we never attempted to figure that in any way. In any of these various cases we have never been asked, and I don't know if we could figure it.

Q. As a matter of fact, a great part of the Northern Pacific railway is built over lands granted by the United States, is it not?

A. That is correct. Under the charter of July 2, 1864, we were granted a right of way 400 feet wide across all the pub-

lic lands, with a main line from Ashland to Puget Sound, and for the branch down to Portland.

Q. In keeping the books of the company have you entered the items where you have purchased lands for this purpose?

A. No, sir; except we could, of course, tell what purchases we have made for right-of-way, oh, I presume, as far back as the reorganization. Beyond that I should think it doubtful if we could ever tell just what those rights-of-way cost. You understand that the Northern Pacific system as it exists today is made up of a whole lot of different railroads, acquired at different times and in different ways, some by downright purchase of a railroad completed and some through subsidiary companies, of which the records and books were kept outside of the Northern Pacific offices; and I should doubt if any intelligent statement could be made. By "intelligent," I mean sufficiently complete to be of any value.

Q. Could you state how much of your right-of-way that you are using today is on granted lands, which you did not pay for at all?

A. I made up a statement at the request of Commissioner Prouty, I think it was—it may have been the attorneys on the other side, but I think Commissioner Prouty called for it in the Spokane rate case, the heading of which indicates its character, and which may answer your purpose: "Statement showing total area and valuation of right-of-way and terminal grounds Northern Pacific Railway Company, subdivided to show area purchased and valuation thereof, and the area donated and the valuation thereof." That does not show the cost. It was a subdivision of the valuation that I was testifying to in this case.

Q. May I glance at that just a moment?

A. Yes. You will see there is a saving clause in the certificate there. I think it is substantially correct.

Q. This was made up April 9, 1907, as indicated by the mark here, Mr. Cooper?

A. Yes, sir.

Q. And this shows, as well as you could show it at that time the area purchased and the valuation thereof, and the area donated and the valuation thereof?

A. That is correct.

Q. I would like to have this appear in the record. This includes both right-of-way and terminal grounds of the Northern Pacific Railway Company?

A. Yes, sir.

Q. And the total area at that time was 156,823.32 acres?
Mr. Holden: What is the date of that?
Mr. Teal: April 9, 1907.
A. That is correct.
Q. And the valuation thereof, as estimated at that time, was $106,890,087.84?
A. That is correct.
Q. The area purchased, of this amount, was 54,305.77 acres?
A. That is correct.
Q. Which was valued at $71,325,213.32?
A. That is correct.
Q. And the area donated was 102,517.55 acres, valued at $35,564,874.52?
A. That is correct.
Q. And that statement was prepared under your direction, Mr. Cooper?
A. Yes, sir.
Q. And represented as nearly as you could what it purports to represent at that time?
A. That is right.
Q. Now, Mr. Cooper, in Spokane, Washington, I notice in this list that the valuation of the terminal properties is, in round numbers, $8,109,000?
A. Yes, sir.
Q. Is it a fact that the greater portion of those properties was in the land grant?
A. That is a fact; that is to say, either the land grant or the right-of-way grant. The two together covered practically all of that. We have purchased small tracts, but I should say that of that total $8,000,000 is the land grant and the right-of-way grant.
Q. And in order to arrive at this valuation, you employ qualified people to appraise it upon the basis as though someone had to purchase the land?
A. That is correct.
Q. Then add 25 per cent. Now, take it at Tacoma, where the valuation of the terminals is $11,525,000, in round numbers; what percentage of that was covered either by land grant, right-of-way or donation?
A. A very little of our Tacoma property came from either of those sources. We had our right-of-way through the town—
Q. What about water front there, Mr. Cooper?
A. (Continuing)—we had our right-of-way through the town, but I don't remember that any of it came through the

land grant. The bulk of the company's property in Tacoma came through the Tacoma Land Company. That was a company that was formed in the early days when it was decided to make Tacoma the terminus, which acquired all of the property in the vicinity of Tacoma, and in which the Northern Pacific, I believe, owned all of the stock first; afterwards its holdings were reduced to 49 per cent., and the remainder was owned by some of its directors. Then the Land Company went into the hands of a receiver; it was reorganized, and the Northern Pacific took some stock in the new company and put in some new money to put the company on its feet (still a minority interest, however), and then it extinguished its minority interest, surrendering its stock in exchange for land. Then it had to purchase from the State of Washington a large part of its holdings, as tide lands. I should say that two-thirds of its property in value, as it owns it today, was acquired by the Northern Pacific since the reorganization in 1896, either by surrendering its stock of the Tacoma Land Company and taking land in exchange or by purchase from the State of Washington or from individuals.

Q. How much would you estimate the actual purchase price would be of that two-thirds, Mr. Cooper, irrespective of this valuation?

A. I could not say without looking up the figures.

Q. Would it be convenient for you to look up those so you could testify as to that tomorrow morning, without any particular trouble? I mean without too much trouble.

A. It is only a question of my being able to find them rapidly. I shall try. It is getting so old that a lot of it is escaping my memory, and I am not sure just how easy I am going to find the records, but I shall make the effort.

Q. All right, Mr. Cooper. Now, this Tacoma Land Company, Mr. Cooper, as I remember, was originally formed, and the Northern Pacific owned all of the stock at that time, and they, knowing that Tacoma was going to be the terminus, acquired all that land around Tacoma there very cheaply, didn't they, for the new town, when they bought it?

A. Of course that is getting back of my time.

Q. I thought you were there then?

A. Oh, no. That is getting back to 1874, and I only came into railroad existence in 1882.

Q. Were you there when Mr. Schulze was there?

A. Yes, I succeeded Mr. Schulze.

Q. That is what I thought.

A. Undoubtedly they acquired that property cheap. It is safe enough for me to answer it that way.

Q. And at that time the company got quite a bit of its holdings for railroad purposes, didn't it?

A. Yes. I don't know the nature of the deal, but there was a transfer from the Tacoma Land Company to the Northern Pacific of a considerable proportion of the property which the Northern Pacific now owns lying west of the city waterway.

Q. But it is perfectly safe to say, is it not, Mr. Cooper, that as representing actual cost of the Northern Pacific, this $11,500,000 is largely in excess of what it cost?

A. Oh, yes, indeed. I doubt if that property cost over a million dollars.

Q. Now take Seattle. The terminals there are valued at $26,184,000. Is that on present Seattle values, on what (say) the Washington & Oregon paid for their property?

A. We made that appraisal, Mr. Teal, in the end of February or the beginning of March, 1907. If it was being made today I doubt if there would be any substantial difference. I do not think there has been any increase or decrease. I think that property has about stood still since.

Q. That $26,000,000 also represents very largely in excess of what it cost the company in Seattle, does it not?

A. Oh, yes.

Q. And that only purports to show, as well as could be shown, what it might cost to duplicate that today, under the circumstances?

A. That is right. Of course some of that property in Seattle, as well as in Tacoma, has been owned by the company a great many years, bought when values were low.

Q. Isn't that also true—that is, that general statement—as to a great many of these terminals, even here in St. Paul? Have not some of the terminals here been owned ever since the Northern Pacific was first organized?

A. Yes; it is true to a lesser extent, however, in St. Paul and Minneapolis and Duluth than in Seattle and Tacoma. In other words, the properties cost considerable more in proportion to their present value in these three eastern cities, eastern terminals, than they did in the two western terminals.

Q. Take North Yakima. You remember when the town was moved up from Old Yakima to North Yakima, don't you?

A. Yes, sir.

Q. And you remember how North Yakima was laid out. That was laid out on railroad land, wasn't it?

A. Partly railroad and partly private land. They joined together, the railroad company and the owner of the private land, and conveyed to a trustee who platted for the two of them.

Q. And when it was platted, the railway terminals were laid out there at that time, were they not, generally speaking?

A. Yes. Of course we had our right-of-way there independent of our land-grant ownership; and then also, in platting the townsite, the right-of-way was widened out.

Q. And that now, generally speaking, represents this item of $1,275,000?

A. That is right.

Q. So that going through these values of these terminals, the values, if they were really reduced to the original cost, the actual cost, that item would be very largely reduced, would it not, Mr. Cooper?

A. Very decidedly.

Q. And of course the same remark would be true as to the right-of-way if no valuation was placed upon that which was in the right-of-way or in the land grant, either one? I mean that would also reduce that value?

A. Yes; but of course the country right-of-way, as you might call it, cost nearer the value I have placed on it today than the terminal properties.

Q. Yes; I think that is correct too. Now, upon the question of the right-of-way and station grounds: does that include, Mr. Cooper, the old right-of-way and the relocations, or does this valuation include only places where the rails are laid today or to be laid for actual operation?

A. That is correct. For instance, take this Minnesota line change; we have built 23 miles of new line. Under the valuation I have there is the 23 miles of old. It so happens that with that line we have not quite abandoned the old and taken up the new; so, as to avoid duplication, I had to elect to take one or the other, and I took the old as I reported it to the State.

Q. So we can rely upon the fact that there are no duplications?

A. There are no duplications, no, sir.

Q. At what date was this valuation fixed by you for the Minnesota Commission, to which you refer, of $108,000,000—this year or last year?

A. The Minnesota rate case?

Q. Yes.

Mr. Donnelly: It was in 1908, you testified.
A. I tried to find the date, and I couldn't find it.
Mr. Donnelly: It was in 1908, last year, you testified.
The Witness: Oh, it was last year—1908.
Q. In the Spokane case you testified in 1906, didn't you?
Mr. Donnelly: No, March, 1907.
A. March, 1907.
Q. Now, for instance (it might throw a little light on it), you remember the Spokane & Palouse, from Spokane south?
A. Yes.
Q. You remember that Mr. George W. Hunt built that originally, don't you?
A. Not the Spokane & Palouse, no. That was Paul Moore and A. M. Cannon of Spokane. George Hunt built the Washington & Columbia River.
Q. Yes, I know that. Now, in appraising your rights-of-way through that section of the country, they have been appraised upon the basis of the valuation of the lands through the Palouse country and all around there, and then multiplied by three times as of today, as nearly as you could?
A. That is right.
Q. In the Minnesota case, the State Commission here have also had the lands and railroad properties of the Northern Pacific Railroad Company valued, have they not, or appraised?
A. A valuation has been made by their engineer.
Q. Do you remember how nearly that approaches yours, whether yours is less or more than theirs in Minnesota?
A. Yes.
Q. On the same basis?
A. I had better read all these figures in.
Q. Yes, I think you had better, if you will, Mr. Cooper.
A. I am reading now from a statement that was put in as an exhibit to my testimony in the Minnesota rate case. It reads: "Comparison of value of Northern Pacific Railway Company's right-of-way and terminal property in Minnesota as reported by the engineer of the Railroad & Warehouse Commission and as testified to by Thomas Cooper in the Minnesota rate case. The company reported the value of its property in the state (meaning by "property" real estate) as $23,487,220.41."
Q. Pardon me, but does that represent the same property in Minnesota that appears in these exhibits?
A. Yes, excepting that the exhibits include some additional purchases since. "The state engineer reported the value of precisely the same property as $15,385,078.47." My testimony

in the Minnesota rate case gave the value of the same property, plus some additional properties purchased since the report was made up, as $25,300,836.91. That gives you these three figures.

Q. Yes, and gives it in a very good way too.

Mr. Donnelly: Mr. Teal, you asked Mr. Cooper to get some information about Tacoma. Do you still want that? I didn't know but what a subsequent answer of his had sufficiently given it, and it is evident that it is going to involve ransacking our whole records.

Mr. Teal: I think you need not bother about that.

The Witness: I tried to placate you with that answer there.

Mr. Donnelly: So it is not necessary to get that?

Mr. Teal: No, just let that go.

An adjournment was then taken until the morning of Wednesday, April 14, 1909, at 10 o'clock, at the same place.

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326 Federal Building, St. Paul, Minn.,
April 14, 1909, 10 A. M.

The hearing was resumed before the Special Master, Hon. Frederick N. Dickson, at the above time and place.

Present:

On behalf of the Complainants, Mr. Hale Holden, Mr. Charles Donnelly, Mr. F. C. Dillard.

On behalf of the Defendant, Mr. Luther M. Walter, Mr. W. A. Wimbish, Mr. J. N. Teal.

THOMAS COOPER recalled, and his cross-examination resumed, by Mr. Teal:

Q. Mr. Cooper, in connection with these various terminals, taking for instance Seattle as illustrative: from the table furnished it appears that there is a trifle over 432 acres appraised as terminal property. Is all of that property in use by the railroad?

A. No, sir. There is some of that property at Smith's Cove, I couldn't say offhand what the acreage is—quite a large piece of ground up there—that was purchased by the Seattle, Lake Shore & Eastern, which afterwards became the Seattle & International, and is now a part of the Northern Pacific system. That piece of property was acquired and has been held ever since, for the purpose of making an outside yard in which to

handle the Seattle business. It is the first piece of level ground outside of what you might call the business part of the city of Seattle, to the north, that is available for that purpose; also being on water front there, it is intended—contemplated—that it will also be used for docks and elevators and coal bunkers and other like purposes required for trans-shipment from rail to water. That piece of ground we have been importuned repeatedly to sell, but knowing that we would sooner or later require it ourselves, we have refused to do so; so that that piece of ground is not actually today in use, excepting that our railroad crosses it.

Q. Then, other than as for crossing purposes, at the present time that particular piece is not in use?

A. That particular piece is not in use.

Q. Can you give the court some idea of the size of that piece of land?

A. (Referring to papers and maps.) With the proviso that this is only an estimate, there is about 4,000,000 square feet not in use carried in this estimate at a rate of 50 cents per square foot valuation, which would produce $2,000,000 of the $26,000,000 in this valuation. I think that that is a reasonably close figure.

Q. That property is at Smith's Cove, didn't you say, Mr. Cooper?

A. Yes, sir.

Q. That is about 100 acres, isn't it? A hundred acres would be 4,000,356 square feet. It is a little less than a hundred acres. Now, then, that leaves 332 acres left in the Seattle terminals. Are all of those 332 acres in railroad use?

A. Practically so. We have a large terminal yard there between Occidental and Oriental Avenues and extending from King Street on the north to the Canal water-way on the south. That terminal is not fully developed. We haven't laid all of the tracks; we haven't filed all of it. That work is now going on from day to day.

Q. Pardon me. Part of that is tide lands, is it not?

A. It is all tide land.

Q. And you are filling that in as you go along, aren't you?

A. Yes, sir.

Q. It is not all filled now, is it, Mr. Cooper?

A. It is not all filled now. It is being filled, and we put down additional tracks from time to time as our business requires it. In fact, the last time that I was in Seattle with the president he then authorized some additional tracks being laid on this tract of land we were speaking of, to meet the require-

ments of business. But just exactly how much of that piece of ground is actually covered with tracks I could not say now.

Q. Well, that could be ascertained reasonably readily, could it not, Mr. Cooper, how many tracks you have in your terminals in Seattle and how much unfilled land you have and how much filled?

A. It could be ascertained, yes; but I don't mean by that, Mr. Teal, that it could be ascertained in a day or two. We probably would have to get information from out there about it. I should doubt if our engineering records at St. Paul are sufficiently up to date to show exactly that situation.

Mr. Teal: I would like to make the request that this information be furnished respecting Seattle: that of the terminal yards at Seattle how much of them is in actual use, how much is not in actual use, what they were valued at in this appraisement.

Mr. Holden: What do you mean by "actual use"—that it actually has a track on it?

Mr. Teal: Not necessarily. I think it is plain. I will make myself plain. It is a fact—and without any criticism of it—that all railroads purchase when they can, and as they can, grounds for terminals for future use and for future development, at least any well conducted railway that I ever saw does it where they have the opportunity. And in the case of the Northern Pacific, I think I may say (not being a witness) that I know that to be the fact, and I certainly do not think that property like Smith's Cove, for instance, or like other property that I think I will show later on, could possibly be used at the present time under any circumstances as a basis of value for fixing rates, in this present generation, and may not be used for thirty years. At any rate, that is the purpose.

Mr. Holden: I understand the purpose clearly, but I don't think you quite answer my question. What would you define as "actual use"? Of course, if you mean by the request you made to have the property defined upon which tracks stand today, that would present your idea.

Mr. Teal: Yes.

Mr. Holden: If that is it.

Mr. Teal: Yes; that would be sufficiently clear. I would even take today.

Mr. Donnelly: I suppose you would be willing to have included any property that is actually necessary to the operation of the Seattle terminal at this time, whether it had a track upon it or not?

Mr. Teal: Oh, yes. I don't want to confine myself—for instance you might have team tracks and have property that is absolutely necessary to get up to your tracks.

Mr. Holden: Of course, we could not quite agree with your narrow idea, with the narrow construction of the suggestion.

Mr. Teal: I don't want to be narrow about this. I think you probably understand, don't you, Mr. Cooper, what I mean? I mean the property that you would say is fairly being used for terminal purposes today, and in use.

The Witness: I should think perhaps the way to get at it would be to make a map that would show the property and what is on it.

Mr. Teal: Yes, that is right. And I would like to have the valuation that appears in this table show in that.

The Master: You mean the valuation of the used and the unused?

Mr. Teal: Yes.

Q. Now, Mr. Cooper, in Seattle, and in fact in all of these terminal valuations, where it might be considered a right-of-way running through a small town, and valued in that way, in all of the terminal properties it is valued as though it was city property, is it not?

A. Yes. The valuation is based on the value of adjoining property largely, or property of similar value for residence and business purposes.

Q. Yes; that is what I wanted understood. Now, in Seattle is any of this acreage here city property in lot and block form; I mean by that, laid out in lots and blocks?

A. Yes, sir. I think that without any exception that I can recall, all our property in Seattle is platted property.

Q. On any of that platted property are there any buildings not used for railroad purposes?

A. I don't recall any buildings in Seattle on any of our property that are not used for railroad purposes, excepting one tract in block 370, Seattle tide lands, that we have a few leases on. The lessees have doubtless put up buildings. That is the only exception that I can recall. But, I might explain here that this same question that Mr. Teal presents was brought up in the valuation made by the Railroad Commission of the state of Washington. That is to say, they made a valuation themselves of the railroad property in that state, and after their figures had been compiled the railroad companies were given an opportunity to criticise them, or comment on them; and I argued that same question before the Commission as to what should be included as the railroad property. I con-

ceded at that time that some property which the company owned on Western Avenue, Seattle—very valuable property, and which was purchased a number of years ago on which to establish a freight and passenger terminal, but that purpose was afterwards abandoned and the terminal was put further down on the tide flats—I conceded that that Western Avenue property should not be included in the railroad valuation, the railroad purpose having been abandoned, and that property is not included in this valuation of $26,000,000 which I have presented in this case. This other property, the Smith's Cove property, and all these other properties I pointed out to the Railroad Commission of Washington the purpose for which it was purchased, the purpose for which it was being held, and my judgment as to the necessity for its use by the Northern Pacific in the reasonably near future—within ten years I think was the date that I put it—that if the business of the Northern Pacific expanded and the country developed as we had every right to believe that it would, that all of that property would be necessary within that period of ten years for railroad use.

Q. In connection with certain of your properties in Seattle, they are leased for building purposes, are they not, and stores are situated on them?

A. No, sir. I think you have in mind, Mr. Teal, that Western Avenue property that I speak of. That is all cut out of this valuation.

Q. I was speaking of the Northern Pacific Railroad Company. It does own property in Seattle, which it leases for business purposes, does it not?

A. The only tract is that part of block 370. We own I think it is six lots in that block on Seattle tide lands, which is leased.

Q. Is that where the National Grocery Company is?

A. Oh, no; that is the Western Avenue property that I tell you we cut out.

Q. That is what I was getting at. I say that the Northern Pacific does own a considerable amount of property in Seattle which it does lease for business purposes, does it not?

A. Oh, yes; it owns that Western Avenue property; but that Western Avenue property is not included in my valuation.

Q. That I understand.

A. Oh, yes.

Q. I want to ask you to what account does the income go that is received from rents of property of that kind by the Northern Pacific?

A. I think under the new Interstate Commerce classification of accounts that rentals are credited to "Miscellaneous

Revenue." Now you are getting into the domain of the accounting department and I am not very sure of my ground.

Mr. Donnelly: The comptroller can probably tell you that.

Mr. Teal: Yes; I did not intend to go beyond it.

Q. I believe you said that practically all of your Seattle property was platted into lots and blocks and streets?

A. Yes, sir.

Q. Is the area included in the streets and alleys throughout this platted property included in this 432 acres?

A. Only where they have been vacated.

Q. Only where they have been vacated?

A. Or where we have a franchise which gives us the use of them, equivalent for our purpose to an ownership.

Q. Do you recall any vacation in Seattle that has been made at the request of the Northern Pacific for which the city received any compensation?

A. No, I do not. Take the large block of land which we call the terminal, between Occidental and Oriental, and in which the large value is in this $26,000,000; when we got our franchise there it was coupled with a number of conditions as to the construction of overhead bridges. In other words, we are required to carry the streets overhead, at our expense, across our terminal ground, which, of course, was equivalent to paying compensation to the city.

Q. Have any been constructed yet, of which you are aware?

A. I really don't know about that. I know that there is an agitation regularly coming up about commencing the construction of these bridges; and I think what has been in the way of their being constructed has been these new railroads coming in and getting themselves fixed—the Oregon & Washington, and the Chicago, Milwaukee & St. Paul—as the bridges would necessarily have to be carried over their tracks also.

Q. I understand. I wasn't criticizing. I just wanted to know if there were any bridges built.

A. No. I think that is the reason of the delay.

Q. Do you recall any compensation that you paid to the city for any franchises there?

A. No, sir.

Q. Then, could you state how much of this land that is included in this 432 acres was originally streets that were vacated, or streets upon which you had been given franchises, and the value of that portion?

A. No, sir; I have never attempted to figure that in any way.

Q. Quite a considerable amount, is it not, Mr. Cooper, or would be?

A. I really don't know, Mr. Teal. I have never figured it. I never thought of it at all in any way till you just sprung the question on me now; and I really couldn't say offhand just what that area is, or anything about it.

Q. That could be ascertained quite readily, could it not, Mr. Cooper?

A. Well. it could be ascertained, yes. Of course all of these things mean considerable work.

Q. I know; but this is an exceedingly important thing. We are dealing no wwith figures that are apparently being introduced for the purpose of furnishing a basis on which to charge rates all over this country, and it is quite important that the basis be understood, and I would like to have you do that, if you will.

Mr. Donnelly: Do what, Mr. Teal?

Mr. Teal: To calculate the amount of area that is in the terminals in Seattle that are the result of vacated streets or streets on which franchises have been granted, which have naturally resulted in their vacation, and what that particular acreage was valued at.

The Witness: Well, do you wish that I should include in that calculation the area of a street where we are obligated to build a bridge to carry the street up over it?

Mr. Teal: Oh, yes. And you can state where you have built bridges and where you are obligated to build them, if you desire.

Mr. Donnelly: I suppose the purpose of obtaining this information is to determine just what portion of that area cost the Northern Pacific Railway Company nothing?

Mr. Teal: Yes.

Mr. Donnelly: And more particularly that portion of the area that came by donation or the grant of franchises from the city?

Mr. Teal: Yes.

Q. Could you do this, Mr. Cooper, in connection with the terminal situation at Seattle: Could you state or furnish the figures showing exactly what all the terminals actually have cost the company in Seattle?

A. I don't feel at all sure that I can, Mr. Teal. I had occasion to hunt the same information at the request of the Minnesota Railroad Commission as to St. Paul and Minneapolis and Duluth, and I had the greatest difficulty in digging out those figures, and at the end of it I found they were very in-

complete and very unsatisfactory. Now, the Seattle situation is complicated by the fact that considerable of the property that we now own was originally acquired by the Seattle, Lake Shore & Eastern, which road went through receivership and was reorganized and became the Seattle & International, and then was merged into the Northern Pacific. Also, there was quite a part of that right-of-way that we acquired in a trade with the Columbia & Puget Sound Railroad Company, now owned by the Pacific Coast Company. Now, as to that property—which is a considerable part of it—I doubt my ability to find the first cost, because I doubt if we have the original title papers, in fact I am sure we haven't got the original title papers as to that property. We may have as to the Seattle & Eastern Railroad property; I don't know until I look it up.

Q. Your books show to some extent what properties you have bought in Seattle and what you have paid for them, do they not?

A. To some extent, yes.

Q. Could you furnish a statement showing the acreage purchased, so far as you can, and the actual value of that?

A. Yes, sir.

Q. I mean the actual purchase price.

A. Yes, sir. In other words, you would like this Seattle statement made to the furthest extent that I can from the records available?

Q. Yes.

A. Because that will show them the acreage that you can show, and the actual cost.

Mr. Donnelly: That, then, would probably cover the previous request.

Mr. Teal: What is that?

Mr. Donnelly: That would show just what had actually been paid.

Mr. Teal: No, there is a little difference between the two things.

Mr. Donnelly: You wanted that independently?

Mr. Teal: Yes.

Q. Now, Mr. Cooper, I don't want to go through all of these different terminals in this way, but I will ask you just one or two questions about others, and then ask you if they are illustrative of them all. Take at Spokane, Washington: there is 422 acres figured in the terminal grounds there. Are those all in railroad use in Spokane?

A. There is a portion of the right-of-way at Spokane that is leased for industrial and commercial purposes—a part of

the charter right-of-way. That is leased under terms which give us the right of cancellation, if required for railroad purposes, upon one year's notice or less. That property is a part of the original right-of-way, as I have said, and is leased for these purposes under leases containing that condition.

Q. That property lies along both the north and south sides where the warehouses are?

A. Yes, sir.

Q. And it is leased to people for warehouse purposes generally, is it not?

A. Yes, sir.

Q. And you get a revenue from that?

A. Yes, sir.

Q. Could you state how much revenue you receive from rentals in Spokane on property on the terminal grounds, how much of the acreage in Spokane is not used for railroad purposes, and the value of that portion that is leased and is not used for railroad purposes in Spokane?

A. I have not that information with me at all.

Q. That could be easily procured, could it not?

A. That could be procured, if you will eliminate the word "easily."

Q. Well, I imagine you collect your rents very promptly?

A. Oh. yes. All of this means work, of course, and it means considerable work, and it is not quite as easy to do as I think you have in your mind, Mr. Teal. But it can be done. It is a question of how much and how far we ought to be asked to do this kind of thing.

Q. But, Mr. Cooper, there is absolutely no way that a court can pass on this, unless it has the facts, you know, before it, and you gentlemen are raising this issue. We did not raise it. So that I will have to ask that in the Spokane terminals—that is, in the acreage in the Spokane terminals, that the information be furnished showing the amount of that acreage which is not used for terminal purposes, and its value, the amount that is reached and the amount of rentals received therefrom, and the values—as asked in the previous question.

A. Will it be satisfactory if these be made up and submitted as soon as we can get it?

Q. Yes.

A. By that I mean—I am going to Washington tonight, and all this work is going to take some time and going to take my personal attention.

Q. Yes. That is quite satisfactory, as long as it is done

within a reasonable time, and, as far as I am concerned, you can be the judge of the reasonable time.

Mr. Donnelly: It probably will not be necessary for Mr. Cooper to again take the stand; he can submit those things?

Mr. Teal: I am inclined to think so.

The Witness: I will make that complete, of course.

Q. Mr. Cooper, take in Tacoma: you have 530 acres there—that is not quite a square mile of land. Do you use all that for railroad purposes in Tacoma?

A. All of that property is not in use at this time for railroad purposes.

Q. What purpose is it put to?

A. Some of it is lying idle, waiting until the time comes when we will require it; and a part of it is leased for various industrial and commercial purposes.

Q. I would like to have the same information concerning the Tacoma terminal. Now, I would like to ask you generally, so as not to go over all of this—I do not feel that that is necessary: is it or is it not a fact that in the acquisition of these terminals generally regard has been paid to the future, and that in substantially all of these cases purchases of property which is not now in use, but is intended to be used in the future, if the business develops so as to warrant it, have been made?

A. The company has, I think every one will agree, exercised reasonable prudence in providing itself with ground for expanding its terminals at the larger points. We have found, however, as well fixed as we think we are, that we still have to be buying. as that exhibit No. 1 that I made shows that I have been purchasing property at quite a number of terminal points in the last three or four years, and we are now purchasing in a few places. So that, answering your question generally, the company has property, not at all of its terminals, but in St. Paul, Tacoma, Seattle, Duluth, and Superior. It has property there which it is not using today for railroad purposes, but anticipates using within a reasonable period of time. I cannot recall at any of the other terminals any substantial amount of property—

Q. At Spokane, for instance?

A. No. At Spokane we have practically nothing there but what is in use. We are being crowded there now.

Q. You spoke about a lot of property leased for warehouse purposes.

A. Excepting that property which is leased for warehouse purposes and which really is not available for a yard. It is a part of the right-of-way.

Mr. Donnelly: Part of the granted right-of-way?

The Witness: Part of the charter right-of-way.

Q. At substantially all of these points along the line have you not property that is used for warehouses and rented for such purposes—stores?

A. Not for stores.

Q. Well, warehouses?

A. Yes. Under our rules we do not lease our property for purposes other than which require track facilities.

Q. That is what I mean—commercial purposes requiring track facilities.

A. Commercial and industrial purposes. There are some. I don't want to say that at every point we have property leased, but we have at most of these points; the idea being that here is a piece of property which we do not require today, but will require some time in the reasonably near future, therefore we might as well put it to a beneficial purpose in the meantime, making use of it and getting some revenue from it which goes into our treasury.

Q. There is one other question I desire to ask you in connection with this valution. The valuation submitted, as I understand it, is based upon the value of the property in the opinion of these gentlemen you have chosen, or selected, as it stands today, for commercial purposes or for the best purposes to which it could be put—the most available purpose.

A. That is right. That is to say, putting it in another way, and I always prefer to use that expression—it represents its value on the basis of the cost of reproducing it today.

Q. Yes; but we sort of come around in a circle there. For instance, let me illustrate: if the railroad was not there today, we will say in Yakima, or any other point, then this land that is used for warehouse purposes and that you receive rents from, would have no value for that purpose, would it? It is only the trackage that gives it the value, is it not?

A. Oh, no. If the railroad wasn't there that property would probably be covered with retail stores and business blocks. It is all right in the heart of the city of North Yakima.

Q. I only used North Yakima as an illustration. I am speaking of where it runs along through a city, or through any place, as far as that is concerned: the value for its most beneficial use—whether it is warehouses or anything of that kind, is taken, is it not?

A. Yes. It is the value that is determined by what other property similarly situated is being bought and sold for in the open market. That is the basis on which we determine

what its cost of reproduction is, adding this percentage which I explained yesterday.

Q. Then, if the building of the road itself at that point creates that value, that value appears in this report as part of the cost of reproduction, does it not?

A. How is that?

Q. I say if the building of the road creates the value, or adds anything to the value of that property, that added value is reflected in these figures, isn't it?

A. Every element that goes to make up the value of the property is, of course, in these figures—every element.

Q. Yes, but when you speak of the cost of reproducing a railroad—when you start to reproduce it the railroad isn't there. Now, ordinarily speaking, when a railroad is built and a warehouse section developed, the fact that the railroad is built there, as was evidenced the other day in Portland by the increasing values when the rails were laid for warehouse purposes, that is what creates the value for that purpose?

A. Well, I don't quite agree with you there, Mr. Teal. The fact is that—take the case at Spokane: if our railroad was not there, but the city, from the existence of railroads in other parts of the town, had reached its present state of development, and the business centre was located just as it is now, our property would be more valuable if the Northern Pacific was eliminated, because the higher class of property, the higher values, are not warehouse values, but retail stores. So that this particular property (referring to Spokane as an example) might really have a still higher value if the railroad was not there.

Q. Well, to make it general: but it is true that whatever element adds to its value is considered in these figures here?

A. Oh, yes.

Q. I don't know whether I asked you yesterday or not, but would you be able to furnish the court with a statement showing the original cost of the right-of-way and terminal grounds of the Northern Pacific Railway Company?

A. I think that is absolutely hopeless.

Mr. Donnelly: Do you mean of the railroad as it stands today?

Mr. Teal: Yes. I don't know whether it is "yes" or "no."

Mr. Dillard: He said yesterday it would be a hopeless task.

The Witness: I think that is absolutely hopeless to undertake.

Mr. Dillard: He told you yesterday that it would be a hopeless task and he would be unable to do it.

Q. Can you give the figures of the area of the original land grant to the Northern Pacific?

A. Of the land grant?

Q. Yes. The extent.

A. With the explanation that the land grant is not yet finally adjusted. That is to say, there is quite a large area of the land grant unsurveyed yet, and we cannot determine exactly how much land will ultimately be patented to us under the grant. I will state that it will be about 40,000,000 acres.

Q. That would be the total grant?

A. That is the total land grant.

Q. Could you give the court any approximate idea of its value at the time it was granted?

A. I could not. On July 2, 1864, it could not have been worth very much; but that was before my time. I was in Scotland then, so I could not attempt to figure how much that land grant was worth.

Q. But its value was very little compared with what it is today?

A. That is true, of course.

Q. Do you carry any entry on your books that would represent the value of the original grant?

A. No. I am very sure that that is not carried on the books at all. We just take the—

Q. That would not be within your department?

A. No; it would be in the accounting department. But I am very sure it is not there. We just take the receipts as they come in, the sales as they are made.

Q. Could you give an idea as to how many of these lands have been disposed of?

A. Yes. I think our last annual report showed between 10,000,000 and 11,000,000 acres undisposed of.

Q. Could you give any idea of the value of that remaining on hand?

A. I could not, that would be any satisfaction to myself or valuable to any one else. So much of it we have never examined, and unsurveyed land, we have no idea what its character is.

Q. Could you state how much the company has received for the lands disposed of?

A. I have not those figures with me. They are available, but I haven't them with me.

Q. Those figures are available?

A. Those figures are available, yes, sir.

Q. And of course, to whom the sales were made—certainly of late years to whom the sales were made?

A. Yes. You mean every sale?

Q. Not necessarily. I say if it was desirable to look into it, that data is available?

A. Oh, yes.

Q. Did you say that you were an officer, or connected with the Northwestern Improvement Company?

A. I am second vice-president and land commissioner.

Q. What is the Northwestern Improvement Company?

A. It is a corporation organized under the laws of New Jersey, all of the capital stock of which is owned by the Northern Pacific Railway Company.

Q. What properties has this company?

A. It owns the land grant of the St. Paul & Duluth Railway Company. At the time we purchased the St. Paul & Duluth Railroad Company property the title to the land grant portion of it was put into the Improvement Company. It also owns considerable of the Northern Pacific land grant in western North Dakota and Eastern Montana, that was sold to it at the time of the reorganization of the Northern Pacific. It also owns scattered property—some in St. Paul, some in Minneapolis, some at other points along the line. In buying property for railroad purposes we are frequently obliged to buy more than we need, because of the ownership, and in order to more readily dispose of it, we put the title to this, what you might call surplus property, in the Improvement Company, it having no mortgage, and it is easier to transfer than to carry it in the railroad company, which involves securing the release of its mortgages. The Improvement Company also owns all of the coal properties. By all of the coal properties I mean the coal properties of the Northern Pacific system. They are all owned by the Improvement Company.

Q. That includes the coal properties that were acquired under the land grant, does it not?

A. Yes, sir.

Q. The Rosslyn mine and those places?

A. The Rosslyn mine, the Red Lodge, Ravensdale, Belmont, Chestnut; in fact, all of the coal properties. Well, I am not getting that exactly right. It includes all of the operated coal properties. The Northern Pacific still holds title to its coal lands received under its grant, excepting the portions that are in the coal fields where the mines are being operated. The mines being operated by the Improvement Company, the title to such of the land grant lands as are in

each of these fields was transferred to the Improvement Company.

Q. Has that company within the last few months paid a dividend of about 699 per cent. to the Northern Pacific Railway Pacific?

A. Really, I don't know. They paid a pretty good dividend, but I didn't get any of it and I don't know what the amount of it is.

Q. Didn't it amount to over $17,000,000?

A. Really, I don't know what the amount was.

Q. You are a member of the board of directors?

A. Yes, sir.

Q. And voted to declare the dividend?

A. I don't think I was at that meeting.

Q. And so you don't know what the dividend is?

A. Really, I don't. I probably did know. I have seen it, but I don't recall it now. I am not trying to evade the question.

Q. Oh, I know that. Well, perhaps you would recall it this way: after that dividend was paid was there not an extra dividend declared on the entire capital stock of the Northern Pacific by reason of the declaration of that dividend of 11.26 per cent.?

A. There was an extra dividend declared, and perhaps that is the figure, but I have never paid any attention to those figures.

Q. Now, you stated that the Northwestern Improvement Company had no mortgage?

A. No, sir.

Q. It has bonds issued to the extent of $7,000,000, hasn't it?

A. Yes, that is right.

Q. Are the bonds secured by mortgage?

A. No, sir.

Q. I notice on the balance sheet of June 30, 1908, of the Northern Pacific Railway Company, that there is $7,000,000 worth of Northwestern Improvement Company bonds in the treasury, and 2,775,000 shares of the Northwestern Improvement Company's stock carried at par. This was June 30, 1908. Now, that was before the declaration of that dividend, was it not?

A. Really, I don't know. I really don't know when that dividend was declared. I know, of course, it was recent, but I really don't know whether it was before or after that. You

see, Mr. Teal, I don't want you to think that I am trying to evade answering. These are matters that I—

Q. I believe that, Mr. Cooper. I have said that I never saw a fairer witness.

A. I really don't pay attention to these things.

Q. I was just wondering how the statement was put out at par, with $17,000,000, or nearly eight times the amount of the capital stock, on hand. But I will have to take that up with the comptroller. You spoke also of a Northern Pacific Coal Company. Is that another organization controlled by the Northern Pacific Railway Company?

A. That is not in existence now.

Q. That was in the earlier days?

A. Yes; back in the earlier days.

Q. And the Northwestern Land & Development Company; is that out of existence also?

A. That is out of existence, yes, sir.

Q. And the old Tacoma Land Company has been wound up, hasn't it?

A. There is now a Tacoma Land & Improvement Company, which is the name of the reorganized company; but in that company the Northern Pacific has no interest whatever.

Q. They are out of all that?

A. They are out of it entirely.

Q. In the old Tacoma Land Company a number of directors of the Northern Pacific were interested in that, I think you testified?

A. C. B. Wright was the president of that company for a long time when he was one of the Northern Pacific directors, and I rather think John C. Bullit, of Philadelphia, was a director of the Northern Pacific and also interested in the Tacoma Land Company.

Q. You have nothing to do with these reorganized companies, have you—the Tacoma Land and—

A. Thank God, no.

Q. Amen. Now, did you participate in the Wisconsin valuation of the Northern Pacific?

A. No, sir. That was made before I had anything to do with these matters. I think it was made either at the time while I was on the coast or while I was general manager; but I know I had nothing to do with it.

Q. I think the Wisconsin values of railroads in that state were made two or three years ago, since the Commission was appointed?

A. I think that is true, but I know it was before my time.

Q. So, you don't know how the Wisconsin valuation of the property in that state compares with your valuation, do you?

A. No; I have never had any occasion to look into it.

Q. I understood you to say that that example of the Dakota farm and of the price that you paid there in that condemnation case were rather extreme examples, were they not, Mr. Cooper; but you don't undertake to say that is what you go up against all the time?

A. Oh, no; oh, no. Otherwise, of course, the multiple of 3 would be entirely too low.

Q. That is what I supposed.

Mr. Teal: I want to make it just as easy for Mr. Cooper as possible. Of course it is natural we haven't had time to look over these things, and it may be we would want to call Mr. Cooper for a few questions hereafter. I will let him know in time enough.

By Mr. Wimbish:

Q. Does the Northern Pacific carry an account on its books showing the cost of its properties?

A. I really don't know, Mr. Wimbish.

Q. It is not in your department?

A. No, it is not in my department, no. It would be the comptroller.

Q. I won't press the question. Are you familiar with the taxable values of the physical properties of the Northern Pacific Railway? Is there any such account?

A. I assume the tax commissioner could make you up a statement of that kind. We made one up in this Spokane rate case at the request fo Mr. Prouty. The difficulty in making any use of those figures is that in Minnesota we pay under the gross earnings law, so there is no assessed valuation of our property, and the statement that was made in the Spokane rate case would be entirely out of date now, as they are doubling our taxes every year. So that the figures would all have to be made over again; and, as I say, because of the gross earnings law in Minnesota, they would be of little value. But it is something that I have nothing to do with. It belongs with the tax department, which is not under my jurisdiction at all.

Mr. Wimbish: Will there be a witness on the stand who is familiar with that subject?

Mr. Donnelly: I did not contemplate calling any one, Mr. Wimbish. I may say this whole feature was gone into in the Spokane rate case, and so far as that information was available it was supplied; but it was recognized everywhere that it was utterly useless, for the very reasons that Mr.

Cooper speaks of. Some places it is not an assessed valuation that is used for determining what the taxes should be, as in this state, where they pay a gross earnings tax.

Mr. Wimbish: Then, it is not available to find the taxable value of the physical properties of the Northern Pacific and other railways?

Mr. Donnelly: No, not as a whole—the assessed value.

Re-direct Examination by Mr. Donnelly.

Q. Mr. Cooper, Mr. Teal suggested the Seattle, Tacoma & Spokane terminal properties as being fairly illustrative of the quantity of land owned by you at the various terminals that was not in actual use for railroad purposes. I will ask you to state whether it is not the fact that that quantity is very much greater in those three places than it is anywhere else?

A. Oh, yes; very decidedly so; very decidedly so.

Q. Except for those three places, isn't it practically true that all of the property used in the other terminals, or all of the property shown in your valuation, is in actual use?

Mr. Teal: I think the witness testified that was not the case.

Mr. Donnelly: He enumerated two or three places where there was some.

Q. But generally speaking, isn't that true?

A. At Duluth and St. Paul we have what you might call surplus property, besides Tacoma, Seattle and Spokane. Excepting those five points we have no substantial quantity of land anywhere that is not in use.

Mr. Teal: Pardon me. Didn't you say Superior in your other answer, also?

The Witness: And Superior; that is right. Superior is right. That makes six points.

Q. Have you at any of these places any land included in these terminal valuations that in your judgment and in the judgment of the company is not either necessary for its uses now or likely to be used within the near future?

A. We have no property that is not, in my judgment, either in present use or likely to be needed within a reasonable period of time. I eliminated at Tacoma and Seattle both the only properties that I felt at all doubtful about in that respect. I cut them out of this valuation.

Q. At Spokane, this property that is leased is, for the most part, property to which the track facilities of the Northern Pacific extend, isn't it—warehouses?

A. Entirely so. It is all served by tracks. It is a row of warehouses along our right-of-way and parallel to it, and they are all served from sidetracks on both sides of the line—part of the 400-foot right-of-way. We cannot sell the property. We have no immediate use for it. When I say we cannot sell it, I mean that under the Supreme Court decision in the Townsend case we are forbidden to sell any portion of th charter right-of-way. Therefore, not having any immediate use for it, we use it for these industrial and commercial purposes.

Q. The land that was granted to the Northern Pacific, about which Mr. Teal has asked you, of course, land that was granted to the old Northern Pacific Railroad Company?

A. That is correct.

Q. And the present Northern Pacific Railway Company is not a federal corporation, but a corporation organized under the laws of Wisconsin, and which acquired the land grant with the other railroad property at the time of the foreclosure of the mortgages in 1896?

A. That is correct.

Q. You were asked last night, Mr. Cooper, about the estimate of the engineer of the State of Minnesota, or the expert of the State of Minnesota who appraised the value of the real estate used by the Northern Pacific in this state. I think you said that his valuation was somewhere in the neighborhood of $15,000,000, whereas your was about $25,000,000. Now, have you anything to say as to the methods pursued in arriving at his valuation as compared with those by which you reached your own?

A. The valuation made by the state engineer showed a total in the cities of Duluth, St. Paul and Minneapolis of $12,400,000. My valuation on the same property was $20,400,000. When the state engineer disclosed his values so that we could see what they were, and we saw this startling difference, we proceeded to make an analysis of the situation and determine the cause of the difference. The state engineer, in his published report, and also in his testimony in the Spokane rate case, testified that he made up his valuation in these three cities on what he called the sales method. That method (and I am trying to state it as accurately as I can) consisted in determining first the relation that the assessed value bore to the selling price in each of these cities as a whole. He determined that in St. Paul the assessed value was 60 per cent. of the sales value, or true value, as he called it; in Minneapolis it was a little less than 60 per cent.; and in Duluth

I don't remember the figures. It is immaterial. We were not very far apart in Duluth. He then determined what assessment would have been made on the property of the different railroad companies had it been assessed. That is to say, the railroads in this state paying in taxes under the gross earnings law their property is not assessed. Therefore, to carry out his plan he had to determine as best he could what the assessed valuation would have been had it been assessed; and that he determined by taking a strip bordering on the railway company's property on each side, taking the assessed valuation of that strip and determining then what the assessed valuation would be of the railway property if it had been assessed. Having determined the assessed valuation in that way, then he applied this 60 per cent. method in St. Paul to determine what its true value would be. He then took all of the property purchased by the various railroad companies in St. Paul for several years back, ascertained what it had cost them, and determined its true value in the method that I speak of to find out how much in excess of true value the railway companies had to pay for property, recognizing the principle that I have spoken of in my testimony that a railway company has to pay in excess of true value. In that way he determined that the railway companies had to pay in St. Paul 75 per cent. more than true value. He applied the same method exactly in Minneapolis and Duluth, varying the percentage figures slightly. In that way he produced this result which I have stated as to the value of our property in these three cities. It being evident that the foundation of his plan was the assessment, and it being notorious that the assessment in St. Paul is of the most erratic character, we proceeded to get some figures to show the fallacy of determining a value in that kind of a way. I prepared a statement which gives in detail all of the property purchased by the Northern Pacific Railway Company within the corporate limits of St. Paul, from January 1, 1905, to December 31, 1908, showing the purchase price and the assessed valuation and the percentage which the assessed valuation bore to the purchase price. I have that statement here and it shows that the percentage of the assessed valuation to the purchase price varied from 1.9 per cent. in one case to 87.7 per cent.; but the average of the whole thing was 27.8 per cent. instead of 60 per cent. As showing further the fallacy of determining a value in that way, I will read the variation and percentage in these assessments. This is each different purchase that I am reading: 5 per cent; 16½; 23.3; 16.4; 27.9; 18.7; 1.9; 2½; 50.7; 7

per cent.; 4½; 70.6; 27.3; 40 per cent.; 87.7; 40½; 37½; 26.7; 22.4; 36 per cent.; 29 per cent.; 29.9; 22.7—the average of the whole thing, as I have said, being 27.8; the total amount of property purchased being $433,310.61—that being the purchase price. I prepared a similar statement showing the property which we had purchased at Minneapolis, in which city we have made quite a number of purchases. From January 1, 1905, to December 31, 1908, the total amount of purchases aggregate $185,063.41. Without taking up the time to read all of these various percentages, I will state that it runs from 7½ per cent. to 142 per cent., and averages for all of the purchases 34.6 per cent. I then prepared a statement showing the application of the plan of the state engineer to the property which the Northern Pacific had actually purchased in St. Paul and Minneapolis, as shown in the two detailed statements from which I have been reading. That statement showed that we paid for the property $618,374.02; but, according to the state engineer's plan, we should have bought it for $447,124.88. In other words, we paid 38.3 per cent. more for the property than we should have paid. To put it in another way: If we had been able to find people willing to sell their property on the state engineer's method of determining value, we would have paid for it $447,124 instead of what we actually paid—$618,374.02. I thought there could be no better test of the engineer's plan than to apply it to the property which the Northern Pacific had been buying from day to day for the last five years, and that is the result, as I have shown there.

Q. Now, was that plan applied generally through the state, or simply to terminals?

A. That plan was only applied to these three cities. Keeping in mind always the foundation of the state engineer's plan of determining values was the assessment, I had a statement prepared by an abstract company here in St. Paul of all of the transfers of property for which instruments were recorded during the two months of this year from January 1st to February 28th; took every instrument as it went on the books. We took the consideration as shown on the instrument. We went to the assessor's books, found out the assessed valuation, and the result was as follows: I should explain, however, that we eliminated nominal consideration instruments, because of course they could not appear without upsetting all the figures. We found in those two months there was a total of 411 transfers. The percentage of the assessed valuation to the consideration in 14 of those instruments was ten per cent. or less;

there were 12 transfers between 11 per cent. and 20 per cent.; 24 between 21 and 30 per cent.; 55 between 31 and 40 per cent.; 60 between 41 and 50 per cent.; 51 between 51 and 60 per cent.; 41 between 61 and 70 per cent.; 31 between 71 and 80 per cent.; 18 between 81 and 90 per cent.; 17 between 91 and 100 per cent.; 88 transfers over 100 per cent, making a total of 411 transfers. When we had that data prepared and introduced into the Minnesota rate case we felt that we had disposed of the state engineer's plan of determining values of railroad property, or, rather, determiinng the cost of reproducing railroad properties in these three cities.

Mr. Teal: Pardon me. What was the average percentage of those 423 transfers?

The Witness: 411 transfers. The average was 50½ per cent. Now, I have been discussing so far Duluth, St. Paul and Minneapolis. In other cities, towns and villages in the State of Minnesota, the state engineer reported a value of $1,874,392.49, whereas the valuation which I made for the company of the same property, precisely, was $3,112,815—and keep in mind that we are now talking of the valuation of the railway company's property in all cities, towns and villages in the State of Minnesota other than St. Paul, Minneapolis and Duluth. The state engineer testified that he had appraised this property by sending men out to investigate as to its values, and made up his appraisal in that way. Looking over his appraisal and comparing it with my own, I was struck by the fact that he cut me in half so many times, and I wondered how an independent appraisal could hit exactly one-half of my figures. I then went to work and figures out the percentages that he had cut my figures in each case, and I found this situation: there were 78 items (meaning 78 of these towns, cities and villages). He decreased me one item 4/5, four items 3/4, five items 2/3, six items 3/5, 26 items 1/2, four items 1/3, three items 1/4, three items 1/5. His appraisal was identical with mine on eight items. And then there were eighteen items of varying percentages. Now, keep in mind that when I say 4/5, 3/4, 2/3, and so on, I mean exactly that to a cent. It seemed to me manifest that the state's appraisal of these cities, towns and villages was made by taking an axe and chopping my figures, because out of the seventy-eight items we found eight identical, and fifty-two of these exact percentages of reduction. I concluded then, in order to satisfy myself as to whether my valuation or the state engineer's valuation was right, to have an independent appraisal made by local real estate dealers of the thirteen largest towns in the state

other than St. Paul, Minneapolis and Duluth; and by the thirteen largest I mean that I took the thirteen in which my valuation was the greatest. That appraisal was made exactly in the same form in each case, as I read yesterday in the case of Brainerd; that is to say, Brainerd was one of the towns that I had appraised, and in my testimony yesterday I read the certificate of the appraisers showing just exactly how they had made their appraisal. These thirteen towns are Brainerd, Stillwater, Little Falls, East Grand Forks, White Bear, Moorhead, Staples, Crookston, Wadena, Detroit, Fergus Falls. My valuation on those thirteen towns was $911,440.05. The state engineer's figures on those same towns were $455,667.92. The figures of the local appraisers on those same towns were $1,282,612.46. In other words, the state engineer reduced my figures approximately one-half; the local appraisers increased them from $911,000 to $1,282,000.

Q. Were these local appraisers apprised of the purpose for which the appraisal was sought?

A. They were not. They knew nothing about the purpose of it at all, were not informed as to my figures or the state's figures, and made an entirely independent valuation. They were furnished by us with maps showing the property owned by the company, and they were furnished with the form of certificate that we required, and we told them, "Now, that certificate tells you all you are going to be told; that is the basis on which you are to do this work." In each case they divided our property into districts convenient for valuation purposes, and there is every indication on the face of all these reports that they made a careful, fair appraisal.

Q. Is that true of St. Paul and Minneapolis as well?

A. No, St. Paul, Minneapolis and Duluth were handled in a different manner. When we were called upon to make the report, the valuation—

Q. Well, I mean it was true that they did not know the purpose of it?

A. No, they did know the purpose.

Q. I thought they didn't?

A. They were informed that we had been called upon by the State of Minnesota to make a valuation of our property and that we had concluded to employ three local real estate men in each of these three large cities to do the work. They were furnished the maps, and took them off and made up their figures and their report by themselves.

Q. But was any intimation given to the appraisers as to

whether the company desired a high valuation or a low valuation?

A. Oh, not at all. They were to use entirely their own judgment. And in proof of that, if any were needed, as I testified yesterday, I reduced the St. Paul and Minneapolis to some extent, and have since realized I made a mistake in reducing their figures, and in this report I have used their figures. Now, there is still one other item in the aggregation which I made. I have discussed Duluth, St. Paul, Minneapolis, and other cities, towns and villages. That leaves only the country right-of-way to consider. The valuation of the company in the country right-of-way was $1,637,681.10. The valuation of the state engineer was $960,683.75. I concluded that as good a way to refute the state engineer's figures as any that could be found, was to take what it actually had cost us to buy some right-of-way between Wadena and Glyndon, and I will now read what I practically testified to on that subject in the Minnesota rate case:

In the report made by the company to the state, the right-of-way between Frazee and Detroit, in Becker County, is shown as having a market value of $35 per acre and a right-of-way valuation of $105 per acre. (You will observe that that is the multiple of 3 there.) And in the same report the right-of-way in Clay County, Minnesota, is shown as having a market value of $50 per acre and a right-of-way value of $150 per acre.

I present a statement showing in detail all purchases of right-of-way made for the line changes between Frazee and Detroit and between Lake Park and Glyndon, embracing portions of Becker and Clay Counties. The statement gives full details of every purchase, showing the name of the party from whom purchased, the description of the property, the acreage, and the price. This new right-of-way runs through the villages of Lake Park and Hawley, and in order to make a proper comparison the right-of-way through these two villages is shown separately in the statement, and the statement summarized under the different headings of "Hawley," "Lake Park," and "Country." The statement shows that the cost per acre of the country right-of-way averaged $142.15 for 565.84 acres. This new right-of-way was not included in the report made to the state, but the old right-of-way was at the values which I have stated; that is to say, $105 in one county and $150 in another. The relative position of the two rights-of-way are shown on the blue-prints, on which the old right-of-way included in the report to the state is colored yellow

and the new right-of-way is colored red. It will be observed that the two rights-of-way are at no point more than about two miles apart, and they run through land of similar value and character. Therefore, the company's valuation of the old right-of-way, of $105 and $150 per acre, are fully justified by the actual cost of the new right-of-way, which was $142.15 per acre. The report of the state engineer shows a market or true value of the old right-of-way between Frazee and Detroit and between Lake Park and the county line of Becker County, of $18 per acre, and a right-of-way value of $54 per acre; also shows a market or true value in Clay County of $24 per acre, and the right-of-way of $72 per acre. Both the company's and the state's engineers used the same multiplier of 3, and the figures quoted in each case are for right-of-way in the country and do not include any towns or villages. Summarizing, the right-of-way in the districts under consideration valued by the company at $105 and $150, respectively, per acre, is reduced by the state to $54 and $72, respectively, per acre, whereas the actual cost of the new right-of-way was $142.15 per acre.

Now, there is comparison made of an actual purchase of 23 miles of right-of-way, with an estimate made by the company which was substantially verified by the actual cost, and showing that the state engineer's figures were entirely too low when tested by actual purchases.

By Mr. Teal:

Q. The fact is that all the values, so far as those fixed by the railroad company in this case are concerned, are the result of the opinions of local dealers or business men in the particular towns where the property is situated? I am speaking now of right-of-way.

A. That is true to some extent, excepting always keeping in mind that I have verified it myself, and I have used these local appraisers' figures where I was satisfied they were right. I want to say, however, that I have used them fairly. I have used them for or against us, because some of these local appraisals have shown that I was too high; for instance, in Butte, as I explained yesterday, my estimate was too high.

Q. Yes, I understand that. I was simply getting at the method. Generally speaking, that was the method by which you arrived at it?

A. Generally speaking, we employed the best talent we could find to make this appraisal.

Q. Now, in connection with the valuations of these properties where the different railroads themselves were adjacent

and interested, was there any wide divergnce of opinion as to valu between the railroad people?

A. No. Let me explain about that, Mr. Teal. The different railroad companies were all simultaneously called upon by the state to make this report, and a meeting was held in my office of the land commissioners or whatever officials had charge of the work of making the real estate valuation. We wanted to consider a number of things, some of which were not clear in the instructions to us as to what the state wanted. The suggestion was made at that meeting that in view of the importance, from a money standpoint, of our properties in these three large cities, that the railroad companies together employ the three best real estate men, in our judgmnt, fitted for this work, and that was agreed upon. Therefore, the same three men valued the properties of all the different railway companies in St. Paul, excepting the Milwaukee, which had made its own appraisal prior to that time, and another set of three men made the appraisal in Minneapolis, and still another group of three in Duluth, for all the railway companies.

Q. So that on the terminal properties in Duluth and St. Paul and Minneapolis there was not any wide variation in opinion, was there? They had to be the same?

A. They had to be the same, with just such difference in location called for.

Q. And local people in each instance were chosen?

A. Yes, sir, three local real estate dealers in each case.

Q. Real estate dealers?

A. Yes, sir.

Q. When you came to value your own property, where rights-of-way and things of that kind were considered, was there any wide variation at any time between the opinion of the railroad men, where the tracks were contiguous, or adjacent, as to what they would be worth?

A. No, I never compared my figures with those of any other railroad company at all. There are a few cases, perhaps, where a fair comparison might be made between a piece of our line and a piece of another line running through about the same country, but I have never done that at all.

Q. Take this little town of Fridley; don't you both run alongside of each other there?

Mr. Donnelly: What do you mean by "you both?"

Mr. Teal: The Northern Pacific and the Great Northern.

A. Yes, sir.

Q. And don't you go in on one side of a shed and the Great Northern on the other side, using a common shed there?

A. Yes. Well, really, I don't know whether there are two sheds or one shed. I know there isn't much.

Q. You run parallel?

A. The two railroads are side by side; in fact, the two tracks are used now as a double track, under an agreement between the two companies.

Q. Do you know what the opinion of the Great Northern was as to the value of the cost of reproduction per acre at that particular point?

A. You mean what they reported?

Q. Yes.

A. No. I saw, I think, what was said in the report there about that—that they had a much higher valuation than we had.

Q. They had about $3,000 an acre?

A. Yes, I believe that is the figure.

Q. And your figure on the same property was $600 per acre?

A. Well, that is not correct, you know. That is an unfair statement in the book you have there. I will explain to you why, now that you have brought the subject up. My valuation was in a chunk, which included the smaller strip, while the Great Northern, at $3,000, included the station grounds. Mine, while it included the smaller strip, was the larger in a way. Still, if you want my opinion, I think the Great Northern is high.

Q. I wanted to ask you one question, simply to get into the record your judgment about that. There is really a very wide difference of opinion between different people, is there not, as to the valuation of any particular tract of land or any particular piece of land?

A. Well, no, I don't want to assent to that, Mr. Teal. There should not be such a wide difference of opinion between men who are equally well posted in values and the prevailing pieces of property. One man may be pessimistic and the other optimistic, which would make some divergence in their views. One's breakfast, or lunch, or dinner may not sit well with him and he may think a piece of property not worth as much because the world looks a little blue; but there should not be any very great difference between equally well posted men. And still, of course you are bringing judgment and experience into it, and there is bound to be a variation.

(A recess was here taken until 2 o'clock P. M.)

WILLIAM L. DARLING, being duly sworn as a witness on behalf of the complainants, testified as follows:

Mr. Wimbish: I believe it is understood that the objections heretofore entered extend to all of this testimony?

Mr. Donnelly: Yes, to all of the testimony; that is understood, Mr. Wimbish.

Direct Examination by Mr. Donnelly.

Q. Mr. Darling, state your full name.

A. William L. Darling.

Q. And you reside where?

A. St. Paul, Minnesota.

Q. What relation do you sustain to the Northern Pacific Railway Company?

A. Chief engineer.

Q. You are a civil engineer by profession?

A. Yes, sir.

Q. What has been your experience as a civil engineer?

A. Since I graduated from the Worcester Polytechnic Institute, in 1877, I have been with railroads, with the exception of one year's absence.

Q. You have had an experience, then, of something over thirty years?

A. Yes, sir.

Q. All in connection with railroads?

A. Yes, sir.

Q. How long have you been connected with the property of the Northern Pacific Railway Company?

A. I first went with the Northern Pacific in March, 1879, and stayed with them until the fall of 1883; then with the St. Paul & Pacific, which is now part of the Northern Pacific, until the summer of 1884. Then I went with the Burlington, on surveys in Iowa, went from Greenfield toward Macedonia and Council Bluffs. In that fall I went to Florida for some Chicago capitalists, where I made surveys for a branch line from Chipley to St. Andrews Bay, on the Gulf of Mexico. I then went with the Burlington & Northern, in 1885, when they built into St. Paul. I had charge of the St. Paul and Minneapolis terminals for two years, during 1885, 1886 and the first part of 1887. In 1887 I had charge of the location and construction of the Duluth, Watertown & Pacific from

Watertown to Huron, until it was completed. Then I made surveys—a location—for a railroad from Yankton to Sioux Falls for the people of Yankton. Directly after that I went with the Northern Pacific, which was late in 1888, and was with them continuously until 1903. From 1903 to October, 1905, I was with the Rock Island system, as chief engineer. From October, 1905, to January, 1906, I was with the Pacific Railway, locating a line across the State of Washington. In January, 1906, I went again with the Northern Pacific and have been with them ever since.

Q. And the whole of your experience with the Northern Pacific has been in the engineering department?

A. Yes, sir.

Q. And a considerable portion of the time at least you have been engaged in the actual construction of the railroads of the company?

A. All of the time.

Q. All of the time?

A. Yes, sir.

Q. How thoroughly do you know the Northern Pacific property as a whole, Mr. Darling? I wish you would give the Master some idea of the extent to which you have gone over it, main lines and branches.

A. My first experience with the Northern Pacific was in the spring of 1879. I had charge of about fifty miles of the construction of the line west of the Missouri river, during the year 1879, and was on surveys extending from the Missouri river to the Yellowstone, 217 miles. That winter and the next spring I was employed all along the Yellowstone, a distance of 340 miles, locating and getting work ready along the Yellowstone bluffs. That extended out as far as Livingston. The next spring, in 1881, we started in at Bozeman, about 25 miles west of Livingston, and made surveys through to Thompson Falls, where we connected with parties working from the west. That took us over all the line west of the Missouri river except the portion between Livingston and Bozeman, about 25 miles. Then I made several surveys and reconnaissances for side lines in through Montana, and after that was completed I had charge of the construction through what is known as the Hell Gate Canyon, and I stayed there until the road was completed through in 1883. Then I came back to St. Paul and had charge of the terminals in St. Paul and Minneapolis, and had charge of the line of the Northern Pacific from Northtown Junction to St. Cloud, a distance of about 72 miles. Then, at that time I left and

went to Florida, and then went with the Burlington. When I came back in 1888 I had charge of the bridge across the Yellowstone at Red Lodge, Montana, just out from Laurel, west of Billings, and part of the Red Lodge branch. As soon as we finished there, I came back to Little Falls and had charge of the cut-off of the main line from Little Falls to Staples, where they cut off for Brainerd, which was a distance of about 34 miles. As soon as we got through there I went to Montana, and had charge of the location and construction of the Boulder & Elkhorn branch and the Coeur d' Alene branch over the Coeur d' Alene mountains into Wallace. Then I was made principal assistant engineer of the Northern Pacific, and had charge as engineer of construction and maintenance of way over what is known as the Middle District, extending from Mandan west to Spokane. I stayed there a little over a year, and then came to St. Paul as principal assistant engineer on the first district, eastern district, in charge of maintenance and construction, and stayed there as principal assistant engineer and division engineer until I was made chief engineer for the receivers, in 1896, I think, and was there one year. Then the receiver was made chief engineer, and I was assistant chief engineer from that time until the fall of 1901, when I was made chief engineer. I stayed with the Northern Pacific then as chief engineer until the fall of 1903, when I went to the Rock Island system. In the spring of 1906 I came back as chief engineer, during which time we re-built a great part of the road and built some side lines and branches. That brings me up to the present time.

Q. And in doing that you had considerable experience with the actual construction of the road?

A. Yes, sir.

Q. Are you engaged in any actual construction work now?

A. Yes, sir.

Q. And have been more or less continuously during the greater part of this period, haven't you?

A. Ever since the spring of 1906, yes, sir.

Q. Is there any portion of the Northern Pacific road, main line or branches, with which you are not familiar?

A. I don't think so, no, sir.

Q. You have been over the most of it or a good part of it on foot, I suppose?

A. Yes, sir.

Q. As engineer in charge of construction, do you have any

knowledge of the cost of the various items that go to make up the cost of construction of the road?

A. Yes, sir, I think so.

Q. Is it the duty of an engineer to have that information?

A. Yes, sir.

Q. That is a part of his work, I suppose?

A. Yes, sir.

Q. He has knowledge of the cost of construction?

A. Yes.

Q. Do you feel, from the knowledge so gained and from your experience in connection with the Northern Pacific property, that you are qualified to state what it would cost to reproduce that property at the present time?

A. Yes, sir, approximately; as closely as any one can make an estimate without more time and more expense, going over the road.

Q. But with as near an approach to accuracy, I suppose, as it is possible to arrive at it in that kind of a matter?

A. Yes, sir.

Q. Have you prepared such a statement?

A. Yes, sir.

Q. Just produce that statement, Mr. Darling.

A document was produced by the witness, and marked Complainant's Exhibit 4 (Darling).

COMPLAINANT'S EXHIBIT 4 (DARLING).

NORTHERN PACIFIC RAILWAY.

Cost of Reproduction as of April 12th, 1909.

OPERATED MILEAGE.

Main Line	2,819.92	miles.
Branches	2,945.79	"
Second Track	270.01	"
Spurs	354.34	"
Yards and Sidings	1,761.50	"
Total	8,151.56	"

1	Engineering, 3% of items 2 to 26, inclusive	$ 10,209,081.00
2	Right of Way, Station Grounds and Terminals on operated lines	114,693,882.25
3	Grading, Clearing and Grubbing	87,713,979.27
4	Tunnels	4,589,657.50
5	Bridges, Trestles and Culverts	23,304,893.00
6	Ties	20,114,438.51
7	Rails	37,692,304.76
8	Frogs and Switches	1,446,956.59
9	Track Fastenings	5,307,036.05
10	Ballast	11,129,075.10
11	Tracklaying and Surfacing	7,499,435.20
12	Fencing Right of Way	905,090.00
13	Crossings and Signs	202,921.00
14	Interlocking Plants	138,950.00
15	Signal Apparatus	83,370.00
16	Telegraph Lines and Appurtenances	1,553,243.65
17	Telephone Lines and Appurtenances	
18	Station Buildings and Fixtures	3,408,025.00
19	General Office Buildings and Fixtures	879,983.00
20	Shops, Engine Houses and Turntables	5,887,583.77
21	Shop Machinery and Tools	1,383,306.00
22	Water Stations	2,642,286.90
23	Fuel Stations	803,215.00
24	Dock and Wharf Property	4,708,281.00
25	Miscellaneous Structures	2,882,586.70
26	Joint work at Seattle, exclusive of cost of Grading and Real Estate	1,332,199.61
27	Steam Locomotives	18,567,911.67
28	Passenger train cars	7,480,602.00
29	Freight train cars	36,593,737.00
30	Miscellaneous Equipment	1,978,710.00
31	Floating Equipment	612,400.00
32	Mechanical Engineering, 1% of items 27 to 31, inclusive	652,333.61

33	Contingencies to provide for Legal Expenses, Superintendence, Organization, unenumerated items, floods, personal injuries and other unforeseen conditions that might arise during the progress of the work—10% of items 1 to 32, inclusive	$ 41,639,747.50	
34	Interest	164,388,682.09	
			$622,425,904.63
	Lines in Manitoba		7,000,000.00
	Duluth Union Depot, exclusive of Right of Way		597,545.00
	St. Paul Union Depot, 1-9 interest		627,837.77
	Minnesota Transfer Railway, 1-10 interest		575,600.00
	1-3 Interest in Lake Sup. Trml. & Tfr. Ry. Co		116,725.56
	40% Interest in Nor. Pac. Trml. Company of Oregon		2,723,010.40
	Big Fork & International Falls Ry		706,537.53
	Minnesota & International Ry., 70% interest		3,160,839.62
	Supplies on hand		5,831,584.21
	Lines under construction, including Lake Park-Glyndon, Garrison-Missoula, 2nd track Auburn-Meeker and Green River Branch Extension		9,019,283.45
	Nor. Pac. 1-3 Interest in S. P. & S. Ry., Vancouver to Portland, under construction		1,500,000.00
	Nor. Pac. 1-2 Interest in S. P. & S. Ry., under construction		27,608,733.51
	Total		$682,193,601.68

MILEAGE OF NORTHERN PACIFIC RAILWAY COMPANY AS OF APRIL 12TH, 1909.

Description	Main Track		2nd Trk.	Spurs.	Yd. Trks. & Sdgs.
	Main Line.	Branches			
WISCONSIN.	Miles	Miles	Miles	Miles	Miles
Ashland to Wis.-Minn. State Line	77.63	.....	3.90	7.32	21.22
Central Ave. to Wis.-Minn. State Line (center St. Louis Bay Bridges)	6.06	.....	4.85	1.93	18.11
Bay Front Line in Superior	0.68	.....	0.66	.....	4.43
Walbridge Line	3.16	.....	.....	.....	.....
Washburn Branch	.....	33.78	.....	0.17	6.12
West Superior Branch	.....	1.41	.....	.....	1.65
Grantsburg Branch	.....	12.00	.....	0.09	0.82
Spurs in Superior-Joint, N. P. Portion	.....	.....	.....	0.80	0.32
Totals	87.53	47.19	9.41	10.31	52.67
MINNESOTA.					
Wisconsin-Minnesota State Line to Minnesota-North Dakota State Line	237.01	.....	84.22	8.64	140.66
Rice's Point to Minn.-Wis. State Line (center of St. Louis Bay Bridge)	1.64	.....	1.33	1.49	50.98
Walbridge Line	0.09	.....	.....	.....	.....
Lake Park to Hawley	12.85	.....	12.85	.....	.....
St. Paul to Staples	139.77	.....	10.44	21.91	101.48
Little Falls to Brainerd	32.91	.....	.....	.....	4.46
Duluth Short Line	152.06	.....	16.87	16.10	89.22
Line "A," Gen. Office Bldg. to Mississippi Street, St. Paul	1.53	.....	1.53	.....	.....
Line "A," St. Anthony Park to 20th Ave. So., Minneapolis	2.57	.....	2.57	.....	.....
Line from Terminal Yard, Mpls. to Northtown Junction, Minneapolis	3.42	.....	3.37	.....	.....
Duluth Union Depot Company	0.25	.....	.....	.....	2.33
Minneapolis-White Bear Branch	.....	13.11	.....	0.87	7.96
Fond du Lac Branch	.....	12.20	.....	2.04	2.48
West Superior Branch	.....	2.01	.....	2.98	2.57
Cloquet Branch	.....	6.95	.....	2.32	3.58

Description.	Main Track		2nd. Trk.	Spurs.	Yd.Trks. & Sdgs.
	Main Line.	Branches.			
MINNESOTA.	Miles	Miles	Miles	Miles	Miles
Grantsburg Branch	.....	5.08	.....	.....	2.20
Miller Branch	.....	4.27	.....	1.25	1.24
Taylor's Falls Branch	.....	20.52	.....	0.18	2.47
Stillwater Branch	.....	12.74	.....	1.90	4.63
Little Falls & Dakota Branch	.....	87.90	.....	0.55	9.14
Fergus Falls Branch	.....	74.97	.....	0.36	7.40
Red River & Winnipeg Branch	.....	95.45	.....	1.73	22.49
Red Lake Falls Branch	.....	54.34	.....	1.04	3.31
Keystone Branch	.....	6.01	.....	.....	0.86
Joint Tracks, N. P. Portion	.....	.....	.....	2.22	1.67
Totals	584.10	395.55	133.18	65.58	461.13
NORTH DAKOTA.					
Minn.-N. Dak. State Line to North Dakota-Montana State Line	377.54	.....	46.56	17.28	163.36
Red River & Winnipeg Branch	.....	96.24	.....	0.96	15.81
Fergus Falls Branch	.....	74.53	.....	0.25	6.83
Fairview Branch	.....	13.79	.....	1.04	1.25
Fargo & Southwestern Branch	.....	148.61	.....	0.11	14.97
Casselton Branch	.....	60.18	.....	.....	4.41
Cooperstown Branch	.....	62.88	.....	.....	7.35
James River Branch	.....	48.55	.....	.....	3.01
Oakes Branch	.....	15.20	.....	.....	1.75
Devil's Lake Branch	.....	107.65	.....	.....	13.42
Sykeston Branch	.....	85.02	.....	.....	6.26
Oberon Branch	.....	28.07	.....	.....	2.77
Linton Branch	.....	44.21	.....	.....	1.24
Joint Tracks at Linton, N. P. Portion	.....	.55	.....	.....	.62
Totals	377.54	785.48	46.56	19.64	243.05

Description.	Main Track		2nd. Trk.	Spurs.	Yd.Trks. & Sdgs.
	Main Line.	Branches			
MONTANA.	Miles	Miles	Miles	Miles	Miles
North Dakota-Montana State Line to Montana-Idaho State Line	782.28	.....	11.91	25.97	327.10
Livingston to Muir Line	12.00	.....	12.08	.....	.....
Butte Line-Logan to Garrison	124.28	.....	1.69	24.31	49.77
White Pine Hill Line	28.34	.....	.....	.....	4.55
Rocky Fork Branch	.....	44.37	.....	5.00	10.86
Bark's Fork Branch	.....	19.72	.....	3.95	5.88
Park Branch	.....	54.27	.....	2.81	4.73
Gaylord & Ruby Valley Branch-Whitehall to Alder and Renova to Parrot	.....	46.81	.....	0.39	3.76
Red Bluff Branch	.....	21.00	.....	0.30	2.20
Pony Branch	.....	6.65	.....	.....	0.43
Anaconda Branch (leased to B. A. & P. Ry.)	.....	8.99	.....	2.61	16.11
Boulder Branch	.....	7.91	.....	0.88	0.79
Wickes Branch-Corvin to Wickes	.....	3.20	.....	0.99	0.26
Switchback to Montana Central Ry	.....	0.71	.....	.....	.....
Elkhorn Branch	.....	20.13	.....	0.49	1.52
Red Mountain Branch	.....	16.51	.....	2.34	1.82
Marysville Branch	.....	12.58	.....	.....	1.47
Philipsburg Branch	.....	25.94	.....	1.86	2.20
Bitter Root Branch	.....	63.82	.....	6.95	8.52
Coeur d'Alene Line	.....	109.53	.....	4.67	15.53
Cokedale Branch	.....	0.17	.....	.....	.....
St. Regis Cut-off	.....	21.18	.....	0.29	3.02
Totals	946.90	483.49	25.68	83.81	460.52
IDAHO.					
Montana-Idaho State Line to Idaho and Washington State Line	83.34	.....	5.67	9.25	20.43
Coeur d'Alene Line	.....	18.82	.....	2.70	5.00
Burke Branch	.....	7.00	.....	1.37	2.45
Sunset Branch	.....	5.35	.....	0.44	0.47
Fort Sherman Branch	.....	13.65	.....	4.66	1.82
Palouse & Lewiston Branch	.....	54.72	.....	2.79	8.34
Genesee Branch	.....	7.16	.....	0.34	1.24
Clearwater Short Line	.....	62.91	.....	0.81	5.98
Lapwai Branch	.....	66.77	.....	0.73	6.48
Totals	83.34	236.38	5.67	23.09	52.21

Description.	Main Track		2nd Trk.	Spurs.	Yd. Trks. & Sdgs.
	Main Line.	Branches			
WASHINGTON.	Miles	Miles	Miles	Miles	Miles
Idaho-Washington State Line to Washington-Oregon State Line	549.47	.....	23.78	46.47	298.68
Twenty-third Street Line in Tacoma	1.98	.....	1.96	.....	.....
Auburn to Sumas	146.07	.....	21.12	25.02	69.72
Joint Line in Seattle, N. P. Portion	1.13	.....	1.12	.....	3.37
Palouse & Lewiston Branch	.....	84.04	.....	1.79	11.31
Genesee Branch	.....	20.34	.....	0.10	2.88
Farmington Branch	.....	5.89	.....	0.08	0.31
Spokane and Seattle Ry	.....	18.13	.....	.....	0.77
Washington Central Branch	.....	129.88	.....	0.75	10.96
Pasco to Wallula Line	.....	14.87	.....	.....	7.07
Dayton Branch	.....	86.20	.....	1.29	10.86
Pleasant View Branch	.....	19.73	.....	.....	2.05
Tracy Branch	.....	6.12	.....	.....	0.43
Pendleton Branch	.....	10.68	.....	.....	.....
Sunnyside Branch	.....	20.09	.....	0.32	3.59
Roslyn Branch	.....	5.34	.....	4.32	3.74
Buckley Line	.....	33.57	1.53	4.32	7.29
Green River Branch	.....	14.79	.....	2.69	0.75
Burnett Branch	.....	3.53	.....	0.16	1.07
Wilkeson Branch	.....	16.62	.....	1.78	3.01
Crocker Branch	.....	5.44	.....	0.17	0.51
Orting Branch	.....	7.46	.....	3.65	.....
Tacoma Tide Flat Branch	.....	1.06	.....	.....	.....
Snoqualmie Branch	.....	39.19	.....	4.51	5.13
Everett Branch	.....	11.41	.....	7.66	3.62
Seattle Belt Line	.....	24.11	.....	2.76	1.19
Darrington Branch	.....	28.08	.....	2.29	1.50
Monte Cristo Branch	.....	42.12	.....	3.05	1.42
Bellingham Branch	.....	22.74	.....	2.35	2.80
Olympia Branch-Lake View to Centralia, via Gate	.....	56.18	.....	6.81	5.58
Gray's Harbor Branch, Gate to Ocosta	.....	53.29	.....	6.78	6.03
Elma Branch	.....	9.99	.....	1.16	0.42
Peninsular Branch	.....	34.73	.....	7.12	3.74

Description.	Main Track		2nd Trk.	Spurs.	Yd. Trks. & Sdgs.
	Main Line	Branches			
WASHINGTON.	Miles	Miles	Miles	Miles	Miles
Cosmopolis Branch	.....	1.81	.....	0.66	0.33
South Bend Branch	.....	56.68	.....	6.09	6.03
Yacolt Branch	.....	27.27	.....	2.66	3.19
Port Townsend Southern R. R. (controlled)	.....	41.40	.....	2.68	1.31
Joint track at Vancouver, N. P. Portion	0.06	.....	.....	.....	.....
Totals	698.71	952.78	49.51	149.49	480.66
OREGON.					
Washington-Oregon State Line to Portland	39.16	.....	.....	1.67	6.36
Pendleton Branch	.....	30.38	.....	0.61	2.75
Athena Branch	.....	14.54	.....	0.14	2.15
Joint Track at Portland, N. P. Portion	2.64	.....	.....	.....	.....
Totals	41.80	44.92	.....	2.42	11.26
SUMMARY.					
Wisconsin	87.53	47.19	9.41	10.31	52.67
Minnesota	584.10	395.55	133.18	65.58	461.13
North Dakota	377.54	785.48	46.56	19.64	243.05
Montana	946.90	483.49	25.68	83.81	460.52
Idaho	83.34	236.38	5.67	23.09	52.21
Washington	698.71	952.78	49.51	149.49	480.66
Oregon	41.80	44.92	.....	2.42	11.26
Totals	2,819.92	2,945.79	270.01	354.34	1,761.50

Main Line	2,819.92
Branches	2,945.79
Second Track	270.01
Spurs	354.34
Yards and Sidings	1,761.50
Total	8,151.56

Mileage Not Included In Operated Mileage.

STATEMENT OF APRIL 12, 1909.

			Main Track.	Spurs, Yard Tracks and Sidings.
Lines in Manitoba			354.65	47.08
St. Paul Union Depot, Nor. Pac. 1/9 interest			0.06	0.95
Minnesota Transfer, Nor. Pac. 1/10 interest				7.97
Lake Superior Terminal & Transfer Railway Company, Nor. Pac. 1/3 interest				6.86
Northern Pacific Terminal Company of Oregon, Nor. Pac. 40% interest			0.37	8.28
Big Fork & International Falls Railway			34.01	3.84
Minnesota & International Railway, Nor. Pac. 70% interest			122.22	39.88
Spokane, Portland & Seattle Railway Company:				
Columbia Railway & Navigation Co. (Big Eddy to Columbus), included in S. P. & S. mileage, Vancouver to Kennewick				
Astoria & Columbia River Ry:				
Goble to Halladay		79.70		
Warrenton to Fort Stevens		3.80		
Columbia River & Northern Ry:				
Lyle to Goldendale		41.60		
Vancouver to Kennewick, Main Line	220.60			
Pasco to Snake River Junction Line	26.09			
Snake River Junction to Spokane Line	119.01			
Snake River Junction to Riparia Line	40.60	406.30		
		531.40		
Northern Pacific Ry. Co., ½ interest			265.70	
Total			777.01	111.86

Northern Pacific Railway Company.

General Summary of Valuation on Basis of Cost of Reproduction of Right of Way, Station Grounds and Terminals on Operated Lines.

State.	Acres.	Right of Way and Station Grounds.	Terminals.	Total.
Wisconsin	3,421.19	$ 414,619.00	$ 1,904,577.92	$ 2,319,196.92
Minnesota	23,929.73	4,098,555.12	24,509,679.46	28,608,234.58
North Dakota	31,876.00	8,848,155.50	2,719,611.46	11,567,766.96
Montana	51,803.82	5,505,316.50	3,807,885.78	9,313,202.28
Idaho	7,100.81	1,063,832.00	1,095,918.00	2,159,750.00
Washington	38,658.54	9,203,123.50	50,483,222.31	59,686,345.81
Oregon	1,378.55	558,080.70	481,305.00	1,039,385.70
Totals	158,168.64	$29,691,682.32	$85,002,199.93	$114,693,882.25

Grading, Clearing, Grubbing and Rip Rap.

Clearing	23,032 acres @ $80.00	$ 1,842,560.00
Grubbing	36,138 stations @ $16.50	596,277.00
Earth	178,999,469 cubic yards @ 33c	59,069,824.77
Loose Rock	12,660,470 cubic yards @ 50c	6,330,235.00
Solid Rock	13,019,855 cubic yards @ $1.10	14,321,840.50
Rip Rap	2,776,621 cubic yards @ $2.00	5,553,242.00
		$87,713,979.27

Cost Per Cubic Yard For Grading.

	Earth	Loose Rock	Solid Rock
Contract price, 600′ free haul	25c.	42c.	$1.00
Overhaul, extra bills, extra work by Company force, transportation of men, tools and plant	8c.	8c.	.10
Total	33c.	50c.	$1.10

Cost of Clearing Per Acre.

Contract price	$75.00
Extra bills, extra work by Company' forces, transportation of men, tools and plant, cutting additional trees outside Right of Way	5.00
Total	$80.00

Cost of Grubbing Per Station.

Contract price	$15.00
Extra bills, extra work by Company forces, transportation of men, tools and material	1.50
Total	$16.50

Cost of Rip Rap Per Cubic Yard.

Contract price	$ 1.75
Haul of material, extra bills, extra work by Company forces, transportation of men, tools and plant	.25
Total	$ 2.00

Tunnels.

Single track tunnels, lined with concrete.

Lineal Feet, April, 1909.

100–700′	700–1,200′	4,000′	10,000′
3,853′	2,936′	7,548′	9,833′

Double track tunnels, lined with concrete..... 2,354 lineal feet.
Single track tunnels, lined with wood..... 8,209 lineal feet.

Cost of Tunnels.

Concrete, 24 inches thick equals 4.1 cu. yds. per ft. of tunnel.

Concrete			$ 9.00
1¼ bbls. cement			2.50
Freight			1.00
Contract price			$12.50

Concrete, $12.50 x 4.1 equals $51.25 per lineal foot of tunnel.

100′ to 700′—wood—is $50.00 plus 10%. (See note.)	Equals	$55.00	
	Wood	25.00	
			$ 80.00
100′ to 700′—concrete	$50.00 plus 10%	$55.00	
	Concrete	51.25	
	Falsework	13.00	
			$119.25
700′ to 1,200′	$55.00 plus 10%	$60.50	
	Concrete	51.25	
	Falsework	13.00	
			$124.75
4,000′	$75.00 plus 10%	$82.50	
	Concrete	51.25	
	Falsework	13.00	
			$146.75
4,000′ to 10,000′	$90.00 plus 10%	$99.00	
	Concrete	51.25	
	Falsework	13.00	
			$163.25

DOUBLE TRACK, SHORT TUNNELS.

Concrete, 5.2 cu. yds. @ $12.50	$65.00	
Extra excavation, 11.5 cu. yds. @ $3.00	34.50	
Contract price, $50.00, plus 10%	55.00	
Falsework	13.00	
		$167.50

(NOTE)—10% is added to contract price for extra excavation.

ESTIMATED COST AS OF APRIL, 1909.

Tunnels 100′–700′ long, 3,853 feet @ $119.25	$ 459,470.25
Tunnels 700′–1,200′ long, 2,936 feet @ $124.75	366,266.00
Tunnels 4,000′ long, 7,548 feet @ $146.75	1,107,669.00
Tunnels 4,000′–10,000′ long, 9,833 feet @ $163.25	1,605,237.25
Double track tunnels lined with concrete:	
2,354 feet @ $167.50	394,295.00
Single track tunnels lined with wood:	
8,209 feet @ $80.00	656,720.00
	$4,589,657.50

BRIDGES, TRESTLES AND CULVERTS.

Item.	Cost.
SPECIAL BRIDGES.	
Bismarck Bridge	$ 1,140,129
Columbia River Bridge at Pasco	698,808
Snake River Bridge at Ainsworth	1,086,949
St. Louis Bay draw spans	700,000
Valley City Viaduct	728,216
Garrison to Missoula	913,356
St. Regis to Paradise	742,866
Huson Bridge	79,300
Culdesac to Grangeville	384,957
White Pine Hill Viaducts	167,888
New Bridges on Pacific Division	483,740
OTHER BRIDGES, TRESTLES AND CULVERTS:	
Steel Bridges and Foundations	7,806,760
Howe Trusses and Combination Spans	837,920
Pile and Timber Trestles	4,295,284
Reinforced Concrete Bridges	54,100
Stone and Concrete Arches	987,996
Stone Boxes	226,970
Timber Boxes	424,893
Cast Iron Pipe	1,174,866
Vitrified Pipe	369,895
Total	$23,304,893

STATEMENT OF DETAIL PRICES USED IN OBTAINING AVERAGE PRICE PER LINEAL FOOT OF BRIDGES, AS USED IN ESTIMATING VALUE OF AVERAGE BRIDGES ON THE NORTHERN PACIFIC SYSTEM.

BRIDGES:

Steel Superstructure:

I beams	3.3c per lb.	Falsework is included in the price per lb. Deck and freight are not included in the pound price, but are added as separate items for each bridge, freight being taken at full tariff rates.
Plate girders	4.12c per lb.	
Pin spans	4.67c per lb.	
Draw spans	truss price plus machinery.	
Average price on total weight of all classes including everything complete in place	4.81c per lb.	

HOWE TRUSSES:

Cast Iron	2.55c per lb.	Price for timber includes freight. Price for iron does not include freight. Both prices include labor of placing.
Wrought Iron	3.25c per lb.	
Timber	$48 per M.	

SUBSTRUCTURE:

All masonry and concrete taken at $12.00 to $18.00 per cubic yard, depending on amount of wet excavation required and kind of masonry used.

Average price per cubic yard taking yardage into total cost of masonry is $16.77.

Prices include all wet and dry excavation, labor, freight and all other items necessary for the substructure complete in place.

Timber cribs	$38.00 per M.
Piling below cut-off	45c per foot.

PILE AND TIMBER TRESTLES:

Average cost per foot in Minnesota	$12.30
Average cost per foot in North Dakota	9.88
Average cost per foot in Washington	8.00
Assumed for System	10.00

TIMBER BOXES:

Size	2′x 2′	2′x 3′	3′x 3′	4′x 3′	4′x 4′	4′x 5′	5′x 5′
Price	$2.75	$3.25	$3.75	$4.10	$4.50	$5.65	$6.75

STONE BOXES:

1′x 1′	$ 4.40	5′x 5′	$18.90
2′x 2′	6.60	5′x 6′	23.60
3′x 3′	8.80	6′x 6′	28.32
3′x 4′	12.00	7′x 7′	39.33
4′x 4′	13.70	8′x 8′	50.84
4′x 5′	18.40		

CONCRETE AND STONE ARCH CULVERTS:

4′	$ 9.46	12′	$ 66.34
5′	14.34	13′	79.02
6′	19.20	14′	91.70
7′	24.51	20′	126.00
8′	29.30	30′	164.88
10′	48.61		

CAST IRON PIPE:

60″	$17.90	30″	$6.01
54″	14.70	24″	3.89
48″	11.97	20″	3.49
42″	9.57	18″	3.39
40″	9.09	16″	3.16
36″	6.93	12″	2.33

Prices per foot are based on 1.7c per lb. for material, plus freight to bridge site, plus labor of laying.

VITRIFIED PIPE:

36″	$4.10
30″	3.40
24″	2.43
18″	1.66
16″	1.50
12″	1.40

Prices per foot include cost of material, freight to bridge site, and labor of laying.

TIES.

Main track, 3089.93 miles @ 3000 ties per mile exclusive of turnouts and crossings ..... 9,269,790 pcs.
Branches, Sidings and Yards, 5061.63 miles @ 2880 ties per mile exclusive of turnouts and crossings ..... 14,577,495 pcs.

Total ..... 23,847,285 pcs.

SWITCH TIES:
12,729 sets, averaging 3100 F. B. M. each.
CROSSING TIES:
100 sets, averaging 1200 F. B. M. each.
COST:

TRACK TIES:
Average price of ties including peeling and handling 55c
Transportation 200 miles @ 14c per 100 lbs. for an average weight of 180 lbs 25c

Total 80c

SWITCH TIES:
3100 F. B. M. @ $12.00 on the Coast $37.20
Transportation 1,000 miles @ 43c per 100 lbs. for an average weight of 10,230 lbs 43.99

Total ..... $81.19 per set.

CROSSING TIES:

1200 F.B.M. @ $12.00 on the Coast	$14.40	
Transportation 1,000 miles @ 43c per 100 lbs. for an average weight of 3,960 lbs	17.03	
Total	$31.43	
23,847,285 ties @ 80c		$19,077,828.00
12,729 sets of switch ties @ $81.19		1,033,467.51
100 sets of crossing ties @ $31.43		3,143.00
Total		$20,114,438.51

RAILS.

Main track, 3,089.93 miles @ 122.6 tons	378,825.42 tons.
Branches, Sidings and Yards, 5,061.63 miles @ 94.4 tons	477,817.87 tons.
Total	856,643.29 tons.
Price of rail, including two handlings in transit	$31.00 per ton.
Transportation on an average haul of 1,000 miles	13.00 per ton.
Total cost	$44.00 per ton.

856,643.29 tons @ $44.00, equals $37,692,304.76.

FROGS AND SWITCHES.

The total weight of rail is 856,643.29 tons for a total distance of 8,151.56 miles, which gives an average weight per mile, of 105 tons, or 67 lbs. per yard.

The cost of a 67 lb. turnout is:

Switch Stand	$12.00	
Switch Lamp	5.00	
Connecting Rod	1.65	
Split Switch	29.37	
Frog No. 9	31.25	
Guard Rails	8.58	
Rail Braces, 6 @ 11c	0.66	
	$88.51	
Handling in transit and store charges	5.00	
Transportation, an average of 1,000 miles, 1.4 tons @ $13.00, per ton	18.20	
Total	$111.71	
12,729 complete turnouts (except ties) @ $111.71, equals		$1,421,956.59
100 crossings (except ties) @ $250.00, equals		25,000.00
Total		$1,446,956.59

TRACK FASTENINGS.

ANGLE BARS:	
Main Line, 3,089.93 miles @ 7.134 tons	22,043.56 tons.
Branches, Sidings and Yards, 5,061.63 miles @ 6.635 tons	33,583.91 tons.
Total	55,627.47 tons.
TRACK BOLTS:	
Main Line, 3,089.93 miles @ 0.732 tons	2,261.83 tons.
Branches, Sidings and Yards, 5,061.63 miles @ 0.672 tons	3,401.42 tons.
Total	5,663.25 tons.
TRACK SPIKES:	
Main Line, 3,089.93 miles @ 3.240 tons	10,011.37 tons.
Branches, Sidings and Yards, 5,061.63 miles @ 3.192 tons	16,156.72 tons.
Total	26,168.09 tons.
ANGLE BARS:	
Price f. o. b. cars, St. Paul	$32.00 per ton.
Handling in transit	1.00 per ton.
Freight, average haul 1,000 miles	13.00 per ton.
Total	$46.00 per ton.
TRACK BOLTS:	
Price f. o. b. cars, St. Paul	$45.00 per ton.
Handling in transit	1.00 per ton.
Freight, average haul 1,000 miles	13.00 per ton.
Total	$59.00 per ton.
TRACK SPIKES:	
Price f. o. b. cars, St. Paul	$38.00 per ton.
Handling in transit	1.00 per ton.
Freight, average haul 1,000 miles	13.00 per ton.
Total	$52.00 per ton.
Angle bars, 55,627.47 tons @ $46.00	$2,558,863.62
Track bolts, 5,663.25 tons @ $59.00	334,131.75
Track spikes, 26,168.09 tons @ $52.00	1,360,740.68
Tie plates, 6,702,000 pcs. @ 15c	1,005,300.00
Rail braces, 400,000 pcs. @ 12c	48,000.00
	$5,307,036.05

BALLAST.

3,089.93 miles @ 3,000 cu. yds. per mile equals.....9,269,790 cubic yards
5,061.63 miles @ 1,500 cu. yds. per mile equals...7,592,445 cubic yards

Total .....16,862,235 cubic yards
16,862,235 cubic yards @ 66c equals.....$11,129,075.10

TRACKLAYING AND SURFACING.

8,151.56 miles @ $920.00 equals $7,499,435.20

FENCING RIGHT OF WAY.

Right of way fencing, including cattle guards.
Estimated cost to reproduce as of April, 1909.....$905,090.00

CROSSINGS AND SIGNS.

Estimated cost to reproduce as of April, 1909.....$202,921.00

INTERLOCKING PLANTS.

Estimated cost to reproduce as of April, 1909.....$138,950.00

SIGNAL APPARATUS.

Estimated cost to reproduce as of April, 1909.....$83,370.00

TELEGRAPH LINES AND APPURTENANCES.

TELEPHONE LINES AND APPURTENANCES.

Estimated cost of reproducing as of April, 1909.

Northern Pacific, exclusive pole line and wires.....$	860,941.43
Joint pole line and wires, Nor. Pac. one-half interest.....	647,705.12
Telegraph equipment.....	21,598.10
Telephone equipment	22,999.00
	$1,553,243.65

STATION BUILDING AND FIXTURES.

Ordinary brick buildings, exclusive of fixtures and platforms are estimated as $2.50 per square foot.

Ordinary frame buildings, exclusive of fixtures and platforms are estimated as $1.50 per square foot.

Ordinary two-story frame buildings, exclusive of fixtures and platforms are estimated at $2.50 per square foot.

Platforms and fixtures are estimated separately.

Twelve per cent is added to estimates to cover cost of transportation.

Special passenger stations are estimated at actual cost.

Estimated cost..... $3,408,025.00

GENERAL OFFICE BUILDINGS AND FIXTURES.

Includes General Office Buildings at St. Paul and Tacoma, including fixtures and equipment.
Estimated cost to reproduce as of April, 1909 .....$879,983.00

SHOPS, ENGINE HOUSES AND TURNTABLES.

Estimated cost of reproducing as of April, 1909.

Roundhouses, Brick, 7,345 stalls complete, including heating system and pipe systems and drainage @ $2,500	$1,835,000.00
Roundhouses, Frame, 128 stalls complete, including heating system and pipe systems and drainage @ $1,500	192,000.00
Shop buildings, Brick, one-story, complete, including heating system, pipe systems, machinery, foundations and drainage—1,201,755 sq. ft. @ $1.75	2,103,071.25
Shop buildings, Brick, two-story, complete, including heating system, pipe systems, machinery, foundations and drainage—83,700 sq. ft. @ $3.00	251,100.00
Shop buildings, Frame, one-story, complete, including heating system, pipe systems, machinery, foundations and drainage—267,680 sq. ft. @ $1.25	364,600.00
Turntables, complete, including tractors—73 pieces @ $7,000	511,000.00
	$5,256,771.25
Transportation charges 12 %	630,812.52
	$5,887,583.77

SHOP MACHINERY AND TOOLS.

Estimated cost to reproduce as of April, 1909 ..... $1,383,306.00

WATER STATIONS.

Water stations, including tanks, pumphouses, standpipes, wells, pipe lines and pumping machinery.

Estimated cost to reproduce as of April, 1909 ..... $2,642,286.90

FUEL STATIONS.

Includes coal docks of all classes and cost of machinery.

Estimated cost to reproduce as of April, 1909 ..... $803,215.00

DOCK AND WHARF PROPERTY.

Includes wharves, docks and warehouses thereon.

Estimated cost to reproduce as of April, 1909 ..... $4,708,281.00

MISCELLANEOUS STRUCTURES.

Including stockyards, track scales, snow fences, section houses, ice houses, telegraph offices, tool houses, dwelling houses and other miscellaneous buildings and fixtures.

Estimated cost $2,882,586.70

JOINT WORK AT SEATTLE.

Includes Northern Pacific Railway Company's one-half interest in Seattle Passenger Station, and Passenger Station tracks; also one-half interest in the tunnel.

Estimated cost to reproduce as of April, 1909, exclusive of the cost of real estate and grading $1,332,199.61

STEAM LOCOMOTIVES.

Estimated cost to reproduce as of April, 1909 ..... $18,567,911.57

PASSENGER TRAIN CARS.

Estimated cost to reproduce as of April, 1909 ..... $7,480,602.00

FREIGHT TRAIN CARS.

Estimated cost to reproduce as of April, 1909 ..... $36,593,737.00

MISCELLANEOUS EQUIPMENT.

Estimated cost to reproduce as of April, 1909 ..... $ 1,978,710.00

FLOATING EQUIPMENT.

Estimated cost to reproduce as of April, 1909 ..... $ 612,400.00

MECHANICAL ENGINEERING.

One per cent of estimated cost as of April, 1909, of the following items:

Steam Locomotives	$18,567,911.57
Passenger Train Cars	7,480,602.00
Freight Train Cars	36,593,737.00
Miscellaneous Equipment	1,978,710.00
Floating Equipment	612,400.00
	$65,233,360.57

1% of $65,233,360.57 equals $652,333.61.

INTEREST.

Based on reconstructing the whole system in 12 years.

TERMINALS:

The purchase of the following terminals to be made during the first three years:

Superior, Wisconsin	$ 1,904,577.92
Duluth, Minnesota	5,477,377.14
St. Paul, Minnesota	12,156,343.89
Minneapolis, Minnesota	5,545,328.93
Fargo, North Dakota	1,066,054.68
Billings, Montana	1,378,498.90
Helena, Montana	233,456.00
Missoula, Montana	947,116.62
Butte, Montana	1,248,814.26
Spokane, Washington	8,109,128.62
North Yakima, Washington	1,275,182.00
Tacoma, Washington	11,525,728.89
Seattle, Washington	26,814,488.18
Portland, Oregon	481,305.00
	$78,163,401.03

The above amounts to be expended with an equal sum each year. The interest at the end of the third year will equal 1½ years interest of the total amount, and after twelve years, 10½ years interest which, at 6%, is equal to 63% for one year.

63% of $78,163,401.03		$49,242,942.65
Total estimated cost of terminals	$85,002,199.93	
Purchased during first three years	78,163,401.03	
Balance	$ 6,838,798.90	

Balance of terminals to be purchased during years 4 to 10, inclusive, the interest of which, at 6% for 5½ years, equals 33% for one year.

33% of $6,838,798.90	2,256,803.65

Cost of Right of Way and Station Grounds, $29,691,682.32.

Right of Way and Station Grounds to be acquired during years 3 to 10, inclusive, interest at 6% for six years or 36% for one year:

36% of $29,691,682.32	10,689,005.64

Items 3 to 26, inclusive, $225,608,817.61:

To be extended during years 3 to 12, inclusive. Interest at 6% for 5 years, or 30% for one year:

30% of $225,608,817.61	67,682,645.28

Equipment, items 27 to 31, inclusive, $65,233,360.57:

To be acquired during years 5 to 12, inclusive. Interest at 6% for 4 years, or 24% for one year:

24% of $65,233,360.57	15,656,006.54
Engineering, item 1, during 12 years; interest at 6% for 6 years, or 36% of $10,209,081.00	3,675,269.16
Mechanical engineering, item 32, to cover years 3 to 12, inclusive. Interest at 6% for 5 years or 30% of $652,333.61	195,700.08
Contingencies, item 33, covering 12 years. Interest at 6% for 6 years, or 36% of $41,639,747.50	14,990,309.10
Total interest	$164,388,682.09

METHOD OF CONSTRUCTION.

Years 1, 2, 3. Complete purchase of principal terminals, make progress in location of main lines and get contracts ready for construction.

End of year 5. Operate main line in temporary condition for benefit of traffic:

St. Paul to Fargo; St. Paul to Duluth, and Duluth to Staples	577 miles.

End of year 6. Operate main line in temporary condition for benefit of traffic:

Fargo to Livingston	795 miles.

End of year 7. Operate main line in temporary condition for benefit of traffic:
Livingston to Helena and Butte..... 256 miles.
End of year 8. Operate main line in temporary condition for benefit of traffic:
Butte and Helena to Spokane..... 526 miles.
End of year 9. Operate main line in temporary condition for benefit of traffic:
Spokane to Tacoma, Seattle and Portland..... 720 miles.
End of Year 10. Operate branches, sidings and yards in temporary condition for benefit of traffic:
See map.....1,900 miles.
End of year 11. Operate branches, sidings and yards in temporary condition for benefit of traffic:
See map.....1,900 miles.
End of year 12. Complete all work, including 1,614 miles of branch lines and sidetracks.

Q. Previous to the making of this statement, had you had any experience in the preparation of similar statements in other cases?

A. Yes, sir.

Q. Just state what that experience was and in what cases.

A. I first made an approximate estimate as of April 1, 1906, I think, in connection with the Spokane rate case.

Q. March, 1907, wasn't it?

A. No, sir, I think March, 1906.

Q. If it was made in connection with the Spokane rate case it was made in March, 1907. I am quite sure, Mr. Darling; wasn't it?

A. Possibly it was.

Q. It was prepared about the time of the hearing in Chicago before Commissioners Prouty and Harlan?

A. Yes, sir.

Q. That was in March, 1907.

A. Well, that is my mistake. I made another estimate in connection with the Minnesota rate case. That was April 30, 1908.

Q. And in the preparation of those estimates, what did you do in making them up? How extensive a survey of the property or an examination of the elements of cost of the property did you make?

A. With the exception of the grading estimates, it was made almost entirely from our records; I might say also with the exception of ballasting. But in the present estimate and the estimate made for the Minnesota rate case, everything

was taken from our record,, the grading being taken from the profiles of which we have a record.

Q. This statement, Complainants' Exhibit 4, as I understand it, contains, as the first page of it, a summary of all the items that are shown more in detail in the following pages?

A. Yes, sir.

Q. And on that first page is summarized the estimated present cost of reproducing the Northern Pacific Railway as of the present date?

A. Yes, sir.

The Master: I suppose you mean the track?

Mr. Donnelly: No, the entire property.

Q. You include in this estimate the property that is covered in Mr. Cooper's testimony?

A. Yes, sir.

Q. And you accept as the basis of the cost of acquiring, or, to use the technical term, reproducing that property,—you accept the estimates submitted by Mr. Cooper in his testimony?

A. Yes, sir.

Q. That is the basis of the statement?

A. Yes, sir.

Q. That shows a total cost of $622,425,904.63, for the present cost of reproducing the Northern Pacific?

A. Yes, sir.

Q. The items that follow cover mileage that is not used in connection with the Northern Pacific Railway proper at this time; is that correct?

A. Yes, sir. It is property owned or partly owned by the Northern Pacific but not operated by the Northern Pacific.

Q. Now, take these items in detail, Mr. Darling. At the head of the statement you have a statement of the operated mileage, 8,151.56 miles. That is the mileage that is used entirely in connection with the operation of the Northern Pacific?

A. Yes, sir.

Q. The items that follow the total of $622,000,000, on the first page of the statement, represent other mileage than that which is summarized at the head of the statement?

A. Yes, sir, with one exception.

Q. That is to say, in the 8,151 miles you do not include the lines in Manitoba?

A. No, sir.

Q. Or the Northern Pacific interests in the Spokane, Portland & Seattle?

A. No, sir.

Q. Or its interest in these terminal companies?

A. No, sir. But there is one item that is included in that mileage, which is the Duluth Union Depot property.

Q. There is one item which is at the bottom of the page?

A. Yes, sir. That is included in the mileage above.

Q. And how much is that mileage, do you know?

A. Yes, sir, I can tell you. 25/100 miles of main line, and 2.32 miles of siding.

Q. About 2½ miles, then?

A. Yes, sir.

Q. Of main line and siding?

A. Yes.

Q. That is the only item?

A. Yes, sir. Except the lines that are under construction. That is Northern Pacific mileage, but it is not included in this mileage, except as we are operating it. This is for work now under construction, including changes of line, changes of grade, and reconstruction of the line between Missoula and Garrison.

Q. Is any portion of the mileage under construction included in the 8,151 miles?

A. Yes, sir.

Q. Can you state definitely how much of it?

A. There are about 85 miles of main line; I can't tell you how many sidings without looking up the details.

Q. That is, 85 miles of main line and this indeterminate amount of sidings are included in the items grouped at the bottom of the page as "lines under construction"?

A. Yes, sir. But they are also being operated.

Q. But the various items that follow the statement of the mileage at the top of the page, the items numbered from 1 to 34, inclusive, do not take into consideration any portion of the 85 miles of line?

A. Yes, sir, they take into consideration the portion of the line as it was built and as it is being operated.

Q. What I want to develop, Mr. Darling, is, that there is no duplication here.

A. No, sir.

Q. That the amount that is represented as the cost of reproducing the lines under construction, $9,019,283.45, no portion of it is embodied in any of the items that precede the total of 622 million?

A. No, sir. I think I can illustrate that by taking the work we are doing between Auburn and Meeker Junction in Washington. The work there consists of raising the grade of the old line and putting in the second track. Now, the original construction is under these items between 1 and 34. That is completed work. But the work that we are doing is underway, including the double track and the raising of the grade; and that is included in the item of "lines under construction."

Q. And not included above?

A. No, sir.

Q. Take the first item, then, in Exhibit 4, that appears to be "engineering, 3 per cent. of items 2 to 26, inclusive," making a total of 10 million dollars. Now, how did you arrive at that figure, 3 per cent.?

A. That is the usual way of computing engineering, and experience shows that is pretty nearly what it costs. But generally we include three per cent. for equipment—sometimes we do not, when we get a very close estimate, and we have considered this estimate is so close that I have not included engineering equipment, but I have included an item of mechanical engineering, covering a portion of the equipment.

Q. "Mechanical engineering," however, that appears as Items 32, is independent of the general engineering charge at the head of the sheet?

A. Yes, sir.

Q. And this 3 per cent. for engineering covers Items 1 to 26, which items exclude all of the cost of the equipment?

A. Yes, sir.

Q. Is it usual to include as the cost of engineering a percentage of 3 per cent. of all those items, 1 to 26?

A. Yes, sir.

Q. The second item, "right-of-way, station grounds and terminals on operated lines," $114,693,882.25, that, you have already testified, you have taken from Mr. Cooper's testimony?

A. Yes, sir.

Q. And from the estimate as prepared by him?

A. Yes, sir.

Q. The third item, "grading, clearing and grubbing," beginning on page 3 of the statement; if I understand it correctly, there is a detailed statement showing how that total of 87 millions of dollars, which represents the total cost of that work, was arrived at, and in that detailed statement the

first item is "Clearing, 23,032 acres, at $80 per acre." How did you arrive at the number of acres there?

A. That is from our records.

Q. And the price per acre?

A. The price per acre is what I assume as a fair contract cost of doing that work, the original cost being $75 per acre, and the work done since—work done by the company force, including extra bills, extra work by company forces, transportation of men, tools and plant, cutting of additional trees outside right-of-way, a total of $5 per acre, making a grand total of $80 per acre which it would cost the railroad company.

Q. So, the contract price of $75 per acre does not represent all that it costs the railroad company?

A. No, sir.

Q. The additional items, you think, make $80 a fair charge for that?

A. Yes, sir.

Q. That is based on your experience, is it?

A. Yes, sir.

Q. The grubbing, 36,138 stations, at $16.50. Is that number of stations taken from your records?

A. Yes, sir.

Q. And how is the cost arrived at?

A. That is assumed to cost $16.50 per station, and is made up of our ordinary contract price of $15 per station, plus extra bills, extra work by company forces, transportation of men, tools and material, amounting to $1.50, or a total of $16.50 per station.

Q. Mr. Holden suggests that I ask you what a "station" means.

A. A station means a distance of 100 feet for the width covered by the roadbed.

Q. A distance of 100 feet along the line of the road?

A. Along the line of the road, and for the full width of the roadbed.

Q. Whatever that width may be?

A. Yes, sir.

Q. Greater or less, according to the character of the embankment?

A. Or whatever it is required to grub under the specifications. That is generally limited by the height of the embankment or the depth of the cut.

Q. The next item is earth. That means, I suppose, earth excavation, number of cubic yards of material that would be described as "earth" in the contract?

A. That means every kind of material encountered except loose rock and solid rock, whether it is clay or cement gravel or hard-pan, or anything of that kind—all kinds of material except loose rock and solid rock.

Q. Is it usual to make a separate division of hard-pan?

A. Sometimes, yes, sir.

Q. But you have included in the earth excavation whatever would fall under the description of hard-pan?

A. Yes, sir, I have in this estimate, for the reason that nearly all of our work has been done in that way.

Q. The number of yards that it would be required to move in order to reproduce the Northern Pacific system, how is that arrived at?

A. That was taken from our records and profiles.

Q. And the price was obtained how?

A. The price is entirely a matter of judgment as to what that work would cost, based on what work is worth and what work has cost us heretofore.

Q. Can you give to the Master some instance of actual prices paid in the last year or two, which would show the fairness of the price?

A. Yes, sir, I have a statement here; in fact, I have two statements. One shows—

Mr. Donnelly: As long as they are going to go in evidence we had better have those marked.

A paper was marked Complainants' Exhibit 5 (Darling).

COMPL

GRADING DONE DURING YEARS 1879 TO 1907, SHOWING UNIT PRIC

STATE	MILEAGE	GRADING.			
		EARTH			
		Cubic yards	Contract cost.	Ave. cont. cost yd.	
Wisconsin	78.64	1,482,160	$ 367,487.48	.247	
Minnesota	236.845	4,162,122	927,952.01	.223	
North Dakota	805.994	12,295,021	2,076,359.76	.169	
Montana	1,091.066	11,076,046	2,594,867.88	.234	1,
Idaho	238.784	2,557,669	470,326.26	.184	2,
Washington	733.619	12,741,814	2,603,080.81	.204	3,
Oregon	38.55	677,341	118,534.67	.175	
Totals	3,223.498	44,992,173	$ 9,158,608.87	.203	$

COMPLAINANT'S EXHIBIT 5 (DARLING).

GRADING DONE DURING YEARS 1879 TO 1907, SHOWING UNIT PRICES AND AMOUNTS PAID CONTRACTORS, NOT INCLUDING EXTRA BILLS AND FORCE ACCOUNT WORK:

	MILEAGE	GRADING.			CLASSIFIED QUANTITIES.						GRADING—TOTAL QUANTITIES		
		EARTH			LOOSE ROCK			SOLID ROCK.					
		Cubic yards	Contract cost.	Ave. cont. cost yd.	Cubic yards.	Contract cost.	Ave. cont. cost yd.	Cubic yards.	Contract cost.	Ave. cont. cost yd.	Quantities cu. yds.	Contract cost.	Ave. cost.
.....	78.64	1,482,160	$ 367,487.48	.247	922	$ 932.57	1.011	5,[illegible]36	$ 7,993.05	1.535	1,488,289	$ 376,413.10	.253
.....	236.845	4,162,122	927,952.01	.223	76,800	33,784.48	.440	19,376	17,479.40	.902	4,258,299	979,215.89	.230
.....	805.994	12,295,021	2,076,359.76	.169	500,635	201,761.33	.403	76,817	68,510.70	.893	12,872,474	2,346,631.79	.182
.....	1,091.066	11,076,046	2,594,867.88	.234	1,926,519	999,684.58	.514	2,626,364	2,984,772.53	1.098	15,628,929	6,579,324.99	.421
.....	238.784	2,557,669	470,326.26	.184	2,071,705	779,253.76	.376	2,205,665	1,969,775.84	.893	6,835,039	3,219,855.86	.471
.....	733.619	12,741,814	2,603,080.81	.204	3,985,174	1,651,822.62	.415	1,455,703	1,487,014.40	1.022	18,183,692	5,741,917.83	.316
.....	38.55	677,341	118,534.67	.175	30,194	24,155.20	.80	57,991	81,187.40	1.40	765,526	223,877.27	.293
.....	3,223.498	44,992,173	$ 9,158,608.87	.203	8,591,949	$ 3,691,394.54	.430	6,447,122	$ 6,616,733.32	1.026	60,032,248	$ 19,467,236.73	.324

Q. State what Complainants' Exhibit 5 shows.

A. That shows the grading done during the years 1879 to 1907, of which we have a record of the contracts, showing unit prices that we paid the contractors, the amounts paid them, but not including extra bills, force account work, and work done by the railway company. This covers a total mileage of 3,223½ miles, and the total amount of grading, including earth, loose rock and solid rock, 60,032,248 cubic yards. The average prices paid for earth to contractors, on 45 million yards, was 20.3 cents. The average price paid for loose rock, 8,591,949 cubic yards, was 43 cents. The average price paid for solid rock, 6,616,733 yards, was $1,026. Making a general average price for 60,000,000 yards of 32.4 cents actually paid the contractor.

Q. Now, the average price paid for earth excavation, including in that hard-pan, I suppose, in this Exhibit 5,—hard-pan is included?

A. Yes, sir.

Q. Just as it is in your statement of estimated cost of reproducing the whole system?

A. Well, not so much so. There is more of that hard-pan included in loose rock. The original loose rock was made to cover a portion of the hard-pan.

Q. In which statement?

A. In this statement that you have.

Q. In Complainants' Exhibit 5?

A. Yes. Our old specifications provided that under the head of loose rock we should classify the heavy clays as loose rock.

Q. So that this average of 20.3 cents per cubic yard, this average cost of earth excavation, as shown in Complainants' Exhibit 5, represents less hard-pan than is shown in the general exhibit, Complainants' Exhibit 4?

A. Yes, sir.

Q. And is the cost of removing hard-pan more or less than earth?

A. Oh, it is more.

Q. About what is the relative cost of the two items, where they are kept separate?

A. From 18 to 32.

Q. That is, 18 for earth and 32 for hard-pan?

A. 18 to 20 for earth and 32 to 35 for hard-pan, depending on conditions.

Q. What elements did you say were excluded in arriving

at this average of 20.3 cents? What elements are not taken into consideration that are included in the other?

A. All force account work, all extra bills, all transportation of men, tools, plant and material, all work done by the company, all material furnished the contractors by the company.

Q. And the additional cost of those additional items brings the total average up to 33 cents; that is, taking into consideration also the inclusion of hard-pan to a greater extent, it brings this average up to the 33 cents that is shown in the statement Complainants' Exhibit 4?

A. The average for earth, yes, sir.

Q. The point I am developing, Mr. Darling, is this: you show on Exhibit 5 an average cost of 20.3 cents per cubic yard for earth excavation.

A. Yes, sir.

Q. In your statement of the cost of reproduction you show 33 cents per cubic yard.

A. Yes, sir.

Q. Now, I want to have you explain the difference. What elements are included in the latter that are not in the former, in order to bring up that average?

A. The principal reason for bringing up the average today, for earth, is that it costs more to move earth than it did at the time this work was done. It costs a little bit less to move rock, because with the improved machinery which we have and the improved method of doing the work, we can do the rock for a little less price than we could originally. But this old main line work, consisting of earth, costs more to move today than it did at the time this was done, for the reason that the improved machinery takes care of a different class of material, that is, material under different conditions. For instance, the work done at the time these prices were made was very light, very light cuts and very light fills, and was done with scrapers and wheel-scrapers, and today we are doing the work with steam-shovels, but the work is heavier work. They are big cuts and big fills where they can afford to put a steam-shovel in. Therefore, they can do it at a little less price, perhaps, for rock. But the cuts are so big that the earth costs more.

Q. So, in addition to that, the 33 cents does cover all the elements of cost?

A. Yes, sir. That is shown more fully in another statement there.

Paper marked Complainants' Exhibit 6 (Darling).

COMPLAINANT'S EXHIBIT 6 (DARLING).

NORTHERN PACIFIC RAILWAY.

COST OF GRADING DONE DURING YEARS 1900 TO 1909, INCLUSIVE.

Year Built	Line	Mileage	Earth		Hard Pan		Loose Rock		Solid Rock		Total Yardage	Av. Cont. price	Total Charges	Av. Cost per yd.
			Cubic yards.	Av. price	Cubic yards	Av. price	Cubic yards	Av. price	Cubic yards	Av. price				
1900	Palmer Jct.-Auburn	21.664	982,358	0.25			118,161	0.36	13,201	0.90	1,113,720	0.268	$ 372,244.78	0.334
1901	Oberon-Esmond	28.073	393,873	0.136							393,873	0.135	65,859.58	0.167
1901	Arlington-Barrington	28.085	654,221	0.245			19,311	0.40	40,590	0.75	714,122	0.278	238,499.63	0.334
1902	Bemidji-Blackduck	25.745	798,832	0.255			58,025	0.45			856,857	0.268	282,264.47	0.329
1902	Bowden-Denhoff	26.479	621,738	0.16							621,788	0.16	157,237.93	0.253
1902	McKenzie-Linton	45.318	1,016,185	0.17			109,134	0.35	21,968	0.80	1,147,287	0.199	263,474.78	0.229
1903	Blackduck-Bridgie	16.248	281,738	0.34			322	0.50	200	1.50	282,260	0.341	109,234.92	0.387
1905	Bridgie-Big Fork	31.062	355,541	0.245			154	0.364			355,695	0.245	131,070.51	0.368
1905	Edgeley Jct.-Streeter	39.906	1,005,174	0.167			144,309	0.35			1,149,483	0.190	254,818.16	0.222
1905	Denhoff-Turtle Lake	30.529	677,221	0.165			104,223	0.40	106	0.80	781,550	0.196	182,485.08	0.233
1906	Sunnyside Jct.-Grandview	20.093	195,732	0.172							195,732	0.172	44,375.98	0.227
1906	Hoquiam-Moclips	27.891	579,560	0.273			25,847	0.40	344	0.80	605,851	0.279	326,043.84	0.538
1907	Wadena Jct.-Lake Park	57.26	1,259,910	0.229			80	0.38			1,259,990	0.228	376,678.80	0.298
1908	Lake Park-Glyndon	53.66	1,138,884	0.229			272,410	0.404	700	0.936	1,386,914	0.264	564,057.11	0.407
1908	Alta-Berea	10.00	725,994	0.295							725,994	0.295	252,491.26	0.347
1908	Livingston-Muir	12.314	263,200	0.211	311,592	0.361	8,150	0.412	773,218	0.927	1,356,160	0.556	1,043,654.29	0.77
1908	Muir-Bozeman	11.915	69,188	0.212	20,862	0.361	7,938	0.464	50,117	1.018	148,105	0.504	101,736.75	0.637
1909	White Pine Hill	32.89	467,845	0.234	950,645	0.405	372,426	0.464	818,051	0.980	2,608,967	0.563	1,724,793.28	0.661
1909	S. P. & S. Ry	255.80	5,664,114	0.202	2,610,387	0.361	3,300,907	0.454	6,924,443	0.883	18,067,851	0.515	11,750,969.76	0.549
1909	Vancouver-Kalama	29.61	820,214	0.247	984,612	0.393	65,253	0.474	456,098	0.943	2,326,177	0.452	1,278,941.72	0.55
1909	St. Regis-Paradise	24.99	571,943	0.216	853,140	0.37	327,925	0.389	265,203	0.915	2,018,211	0.382	1,068,491.28	0.529
	Total		18,518,535	0.21	5,731,238	0.375	4,934,575	0.439	8,932,239	0.898	38,116,587	0.428	$ 20,589,422.91	0.511

The Column "Total Charges" shows all Charges against "Grading" for each of these Lines from the "Construction Books," at the time each line was turned over for operation.

NOTE.—Cost of Grading done by Railway Company forces not included in the above list:

	Earth	Cost	Ave. Price per cu. yd.
Bridgie to Big Fork	64,008 cu. yds.	$ 20,501.29	32.0c
Wadena Junction to Lake Park	512,335 cu. yds.	325,793.79	63.5c
Lake Park to Glyndon	4,975,895 cu. yds.	1,472,044.00	29.6c
Total	5,552,238 cu. yds.	$1,818,339.08	32.75c

Q. Calling your attention to Complainants' Exhibit 6, which is the next statement on your list, that shows the cost of the grading done by the Northern Pacific during the years 1900 to 1909, inclusive.

A. Yes, sir.

Q. Those are actual prices paid?

A. Yes, sir.

Q. And in that statement, instead of combining the earth and hard-pan, you have kept those two items separate?

A. Wherever we have let contracts with the hard-pan classification clause in it.

Q. At least that has been done from 1908 on?

A. Yes, sir.

Q. Now, taking that statement, which shows the prices actually paid during this period, what has been the average cost or the average price paid per cubic yard for the removal of earth?

A. 21 cents.

Q. And hard pan?

A. 37-1/2 cents.

Q. Loose rock?

A. 43.9 cents.

Q. And solid rock?

A. 89.8 cents.

Q. That covers a total yardage of how much?

A. 38,116,587, at an average price of 42.8 cents.

Q. Are there any elements of cost to which the railway company is, as a practical matter, subjected in connection with the grading that is shown on Complainants' Exhibit 6, which are not shown in the statement itself?

A. Yes, sir.

Q. What are those elements?

A. They are shown in the next to the last column under the head of "total charges."

Q. Oh, yes. Those charges contain the prices paid contractors plus any extra bills which we may pay them, work done by force account, any and all transportation of men, tools, outfits, plant and material, and work done by the company which the contractors would not do under their contract and for which we had no definite prices. That is given in the last column under "average cost per yard," and is shown by the various contracts. The total average price is 51.1 cents, that is what it has cost the company, and for which the company paid the contractor 42.8 cents. Showing that to all

our contract prices we must add at least a common factor of about 8.3 cents per cubic yard.

Q. And that actually is added to the average prices shown on page 3 of your detailed statement?

A. Yes, sir. You will find in the detailed statement that I have taken earth at 25 cents per cubic yard, because it covers all classes of material, both earth and hard-pan.

Q. And you have added to that 25 cents, 8 cents as representing the additional charge per yard growing out of these other items which you have just enumerated.

A. Just for earth and for hard-pan and for loose rock, but for solid rock I have added 10 cents for the reason that solid rock is generally hauled a longer distance and there is more extra work in connection with it.

Q. The next item on the list is "tunnel," the tunnel item showing a total cost for reproducing on the Northern Pacific of $4,589,657.50. From what records or data was that made up?

A. Those are from our records, which are very complete, giving the length of each tunnel and the size of it.

Q. The character of construction?

A. The character of construction, yes, sir.

Q. And the cost of reproducing it, based on your own knowledge of the present prices?

A. Yes, sir.

Q. The next item is "Bridges, trestles, and culverts."

A. That is made also from our records.

Q. Have you any other additional exhibits showing the actual cost of construction of bridges and culverts from which the accuracy of that estimated cost of reproduction can be to a certain extent checked?

A. Yes, sir. I have given on sheet 5-A here the unit prices which we used as a basis for estimating all our bridge work. I have made up a statement showing actual prices paid for piling, for concrete work—

Q. Just take the statement that you speak of. I want to have it put in.

Paper marked Complainants' Exhibit 7 (Darling).

COMPLAIN

ACTUAL COS
EASTERN SECTION OF THE NORTH
OF THE

DESCRIPTION.	Total lin. ft. of piling below cut-off	Total cubic yards of concrete	To weig stee pou
Item No. 1. 10 I-Beam bridges and one deck plate girder on the Dakota Div., put in 1900 to 1908. Work done by division forces. Traffic maintained. Average depth wet excavation, 4'.....	10,442	1,786	73
Item No. 2. 15 I-Beam bridges and two deck plate girders on the Yellowstone Div., put in 1899 to 1907. Conditions same as Item No. 1.....	No piling.	2,205	65
Item No. 3. Mississippi River bridge at Brainerd. 3 140' deck pin spans, 1 60' and 1 85' deck pl. girders. Traffic maintained. Average depth wet excavation, 5' Substructure put in by Construction Dept. Erection contracted, 1900.....	8,650	1,826	85
Item No. 4. Mississippi River bridge at Little Falls, 5 100' deck plate girders. Average depth of wet excavation, 10'. Work done by Construction Dept., 1899.....	2,400	1,184	70
Item No. 5. Double tracking 7 deck plate girder bridges, between Wadena and Moorhead. Piers extended and second track superstructure placed. Traffic maintained on old line only. Average depth of wet excavation, 4'. Work done by division forces, 1906...	12,590	1,548	78
	TOTALS.		
	34,082	8,549	3,73

LAINANT'S EXHIBIT 7 (DARLING.)

COSTS OF VARIOUS BRIDGES ON THE
RTHERN PACIFIC RY., COMPILED FROM DETAIL COST REPORTS
HE MEN IN CHARGE OF THE WORK.

Total weight of steel in pounds.	Cost per lin. ft. of piling below cut-off.		Cost per cu. yard of concrete, including excavation.		Cost per pound of metal in superstructure, including deck and painting.		REMARKS.
	Exclusive of freight.	Including freight.	Exclusive of freight.	Including freight.	Exclusive of freight.	Including freight.	
735,535	33c.	45c.	$12.84	$14.51	3.28c.	3.49c.	Records on this item includes piling with concrete costs. Costs have been separated by assuming piling at figures shown.
652,914	.....	.....	$13.39	$15.81	3.73c. 4.11c.	4.13c. 4.59c.	I-Beam spans. Girder spans.
852,649	37.5c.	54.3c.	$14.37	$16.54	5.29c.	5.64c.	Costs taken from detailed report of Prof. Constant, engineer in charge of the work.
707,000	34c.	52c.	$16.81	$19.44	4.17c.	4.57c.	
783,500	45c.	50c.	$11.75	$12.45	3.44c.	3.65c.	
	AVERAGING ALL ITEMS.						
3,731,598	37.6c.	50.3c.	$13.83	$15.75	4.c.	4.30.	

Q. Now turn to sheet 5-A of the detailed statement, Complainants' Exhibit 4. As I understand it, those sheets purport to show in detail the cost of reproducing the bridges of the Northern Pacific system.

A. Sheet 5 shows the actual cost of reproducing; sheets 5-A and 5-B show the unit prices from which those estimates were made.

Q. Now turn to Exhibit 7, which represents, as I understand you, the actual prices paid for the construction of various bridges on the eastern end of the Northern Pacific. Will you contrast the actual prices paid, as shown on Exhibit 7, with the unit prices as shown on sheets 5-A and 5-B of Exhibit 4?

A. Under the heading of "Bridges," I beams are estimated at 3.3 cents per pound. The actual cost, under Item No. 1, of 10 I beam bridges and one deck plate girder on the Dakota Division put in 1900 to 1908, work done by division forces, cost 3.49 cents per pound including freight.

Q. That is a little more than your estimated cost?

A. Yes, sir. Item No. 2, 15 I beam bridges and two deck plate girders, cost complete 4.13 cents for the I beams and 4.59 cents for the deck plate girders.

Q. As contrasted with the same item of 3.3 cents?

A. Yes, sir, and plate girders 4.12 cents. Item No. 3, Mississippi River bridge at Brainerd, three 140-foot deck pin spans, one 60-foot and one 85-foot deck plate girders, erected in 1900, cost 5.64 cents per pound. Item No. 4, Mississippi River bridge at Little Falls, five 100-foot deck plate girders, built in 1889, cost 4.57 cents. For that same item I have estimated 4.12 cents. Item No. 5, double tracking 7 deck plate girder bridges between Wadena and Moorhead, 3.65 cents per pound.

Q. For what item—the plate girders?

A. Plate girders. The average of all these items is 4.30 cents, for which we have items of 3.3 cents for I beams and 4.12 cents for plate girders. I have a great many more bridges on another sheet.

Q. Well, before we leave this sheet, the prices as shown on sheets 5-A and 5-B include transportation?

A. Yes, sir.

Q. And everything right in place?

A. Yes, sir.

Q. Now, right there on that element of transportation, will

you state at what rate you have computed the transportation in making up this estimate?

A. Tariff rates.

Q. At tariff rates?

A. Yes, sir.

Mr. Teal: You estimated the freight on the property that is used by the railway company at tariff rates?

The Witness: Yes, sir.

Q. And that differs in that respect from previous estimates in what way?

A. In that I used 4/10 of a cent per ton per mile.

Q. Of the previous estimate?

A. Yes.

Q. Taking the next item in the detailed statement, Howe trusses, have you any comparisons to make there?

A. No, I have no records here of Howe trusses. We have built very few lately.

Q. Have you anything to show the actual cost of any of these items that are enumerated in sheets 5-A and 5-B other than those which you have already named?

A. Yes, sir, substructure.

Q. Just show how the actual cost of that compares with your estimated cost here.

A. I have some records on this same exhibit, showing that on Item No. 1 the average cost was $14.51 a cubic yard. Take Item No. 2: $15.81 per cubic yard. Item No. 3—

Q. Now, just right there. Per cubic yard of material removed?

A. Of concrete.

Q. Of concrete?

A. Of concrete in the substructure. Item No. 3, $16.54. Item No. 4, $19.44. Item No. 5, $12.45.

Q. Those items contrast with what in the estimate?

A. Under the head of "Substructure," all masonry and concrete taken at $12 to $18 per cubic yard, depending on conditions.

Q. And those prices include the transportation?

A. Yes, sir.

Q. Does the actual cost, as shown on the blue-print Exhibit 7, include transportation?

A. Yes, sir.

Mr. Teal: That is, the regular tariff?

The Witness: The regular tariff rate, yes, sir.

Q. The regular tariff shown on the blue-print, is it?

A. Yes, sir.

Q. Are there any other comparisons in the blue-print?

A. Yes, sir. Piling for foundations below the cut-off, under the masonry.

Q. How is that item described in the detailed statement?

A. Cost per lineal foot of piling below cut-off.

Q. It does not appear in my detailed statement.

A. That appears on the blue-print—cost per lineal foot of piling below cut-off.

Q. What is the corresponding designation of that in Exhibit 4?

A. In the middle of page 5-A, Piling below cut-off, 45 cents per foot. The actual cost for an average of 34,082 feet is 50.3 cents per foot.

Q. 50.3 cents?

A. Yes, sir.

Q. So it is more than the estimated cost?

A. Yes, sir.

Q. Speaking generally now, have prices at the present time fallen so that you could expect to reproduce this property—at present prices—for less than those that you have previously paid?

A. No, sir. Just now prices are a little bit lower than they were two years ago; but if we should start to reproduce this property, the prices I have given are low.

Q. Now, are there any other comparisons to be made?

A. Not on that exhibit.

Q. Now take the next blue-print, which will be marked Complainants' Exhibit 8.

(A blue-print was so marked.)